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THE

RESULT

OF

AN ECCLESIASTICAL COUNCIL,

CONVENED AT

GROTON, MASSACHUSETTS,

JULY 17, 1826.

3543.13

SECOND EDITION.

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At a regular meeting of the Church of Christ in Groton, held at the house of her Pastor, Nov. 30, 1826,

Voted unanimously, That the Result of the Ecclesiastical Council called by this Church be accepted, and that the same be printed.

A true copy,

Attest, J. TODD, *Assistant Moderator.*

RESULT, &c.

An Ecclesiastical Council was convened at the house of the Rev. Daniel Chaplin, D. D. in Groton, Ms. July 17, 1826, by letters missive from the Church of Christ in said Groton, under the pastoral care of the Rev. Dr. Chaplin, for the purpose of giving advice to said Pastor and Church, in their present peculiar circumstances.

There were present from the

Church in Berlin,	Rev. Reuben Puffer, D. D. *Pastor,* Dea. Job Spafford, *Delegate.*
Church in Theol. Sem. Andover,	Rev. Ebenezer Porter, D. D. *Pastor,* Bro. Jonathan Clement, *Delegate.*
Hanover Church in Boston,	Rev. Lyman Beecher, D. D. *Pastor,* Dea. William G. Lambert, *Delegate.*
Church in Townsend,	Rev. David Palmer, *Pastor,* Dea. John Boutell, *Delegate.*
1*st Church in Charlestown,*	Rev. Warren Fay, *Pastor,* Dea. Matthew Skilton, *Delegate.*
Church in Dunstable,	Rev. Samuel H. Tolman, *Pastor,* Dea. James Taylor, *Delegate.*
Church in Harvard,	Rev. George Fisher, *Pastor,* Dea. Reuben Whitcomb, *Delegate.*

The Council was organized by choosing the Rev. Dr. Porter, Moderator; Rev. Warren Fay, Scribe; and Dea. William G. Lambert, Assistant Scribe. The Rev. Dr. Beecher led in prayer, for wisdom and guidance.

The Committee of the Church made a statement of their circumstances, from which it appeared,

That there is a fund in the town of Groton, of about 11,000 dollars, for the support of the gospel ministry.

That the three senior Selectmen of the town for the time being, the Treasurer of the first parish, and the junior Deacon, by age, of the

church in said parish, are a body politic and corporate, know in law as "The Trustees of the Groton Ministerial Fund."

That the income of this fund is to be paid, "quarterly, to such teacher or teachers of religion, as shall be regularly ordained and settled in said parish, by the joint concurrence of the inhabitants and church thereof."

May 22, 1825. The Rev. Dr. Chaplin requested of his people, that he might have "a godly Colleague provided, one of whose piety and sentiments he could approve."

In July following, having been unable for several Sabbaths to perform the whole service, Mr. Todd, a licentiate from Andover, being providentially present, was invited by Dr. Chaplin, to preach for him.

Sometime in October, 1825, Dr. Chaplin continuing infirm, though hoping soon to resume his labours, at the request of many of his church, he engaged Mr. Todd to supply his pulpit for eight Sabbaths.

November 8, 1825. The church was called together to consider the expediency of settling a Colleague; and voted unanimously, that it is expedient to settle a Colleague with our venerable Pastor.

At an adjourned meeting, November 11, the church voted, 17 to 8, to give Mr. John Todd a call to settle as Colleague Pastor with the Rev. Dr. Chaplin, and a committee was appointed to communicate this vote to the town, and request their concurrence.

November 25. The town met, and after much discussion, took no vote on the question, but appointed a committee to supply the pulpit for a term not exceeding four months. The committee waited on Dr. Chaplin, to ascertain if it would be agreeable to him that they should supply the pulpit; and he signified his willingness that they should do it, for four Sabbaths. The pulpit was supplied by settled Unitarian ministers from Boston or the vicinity.

Many of the inhabitants being dissatisfied with this course, presented a petition to the committee for supplies, before the expiration of the four Sabbaths, that a candidate for settlement might supply the pulpit, and that Mr. Todd might be the person. This petition was signed by about 167 legal voters, supposed at the time to be a majority of the whole town. Dr. Chaplin also remonstrated against supplying the pulpit with such preachers as he could not approve, and offered to provide a supply for the pulpit himself. No attention being paid to the preceding petition, and the remonstrance of Dr. Chaplin, he addressed to the committee the following note.

Gentlemen,

After mature reflection, I have thought it my duty to remonstrate once more, against your thrusting a man into my pulpit against my wishes, and, as I believe, against the wishes of a majority of this people.* Yours &c. DANIEL CHAPLIN.

Jan. 7, 1826.

The committee, in reply, claimed the right to supply the pulpit, without reference to his wishes, by authority derived from the town.

* The candidate who is since settled, had now, it is believed, been hired to preach on probation.

January 10, 1826. The Pastor convened the church, for the purpose of inquiring whether he had, in any way, forfeited his relation to the church, or his rights as their Pastor; and whether, in the opinion of the church, he had a right to claim the pulpit, and supply it in the manner which he thought proper. The church replied that he had not forfeited his relation, or rights as their Pastor, and that, in their opinion, he had a right to supply his pulpit for the present, at his own discretion.

On the 16th of January, at a large and respectable meeting of the inhabitants of Groton,* held at the house of Daniel Shattuck, Esq. it was voted unanimously, "that it is the wish of this meeting, that Dr. Chaplin should supply the pulpit, on his own responsibility, and according to his own discretion."

In consequence of this expression of opinion, by so large a portion of his people, Dr. Chaplin addressed the following note to the committee for supplying the pulpit.

Gentlemen, *Groton, Jan. 20, 1826.*

I have already apprised you, in your official capacity, that I was desirous of supplying my pulpit, at my own expense. I think it my duty to say to you, that it is still my desire; and to add, that I understand it to be the wish of most of my church, and of a majority of my beloved flock, that I should do it. I am prepared to supply to-morrow; and shall be hereafter, for the present.

Yours, &c. DANIEL CHAPLIN."

The committee, in their answer, consent that Dr. Chaplin may supply the pulpit himself; but, concerning any other supply, they say, "He must distinctly understand, that we have, in the legal discharge of our duty, provided a supply of the pulpit, and that if he should attempt to enter it, he will be responsible for any consequences which may follow, in the course of a just, legal, and firm opposition to such an attempt."

The evidence, from this note, from verbal declarations on Sabbath morning, and from appearances in the house of God, that forcible resistance was intended, and would be employed, in excluding from the pulpit the supply which Dr. Chaplin had provided, was such, that neither the Doctor, nor the gentleman who was to have preached, went to the meeting house. From this time, Dr. Chaplin and his church ceased to attend public worship in the house where he had prosecuted his protracted ministry.†

At a town meeting in March, Dr. Chaplin renewed the offer of supplying the pulpit at his own discretion and expense, for six months.

But the town voted to authorise the committee to supply the pulpit for six months, provided it should be done without any expense to the town.

In April, at a town meeting, a committee was appointed to inquire and report, as to the expediency of withholding Dr. Chaplin's support;

* This meeting was composed of about one hundred persons; and, generally, of those who were steady in their support and attendance on public worship.

† Written requests have repeatedly been made since, for the use of the house for lectures, and meetings of the church, and refused; and at one time, having notified a meeting of his church in the meeting house, and finding the door locked against him, the venerable man stood on the steps of the door, and prayed to the God of heaven, and addressed his beloved flock.

and in May, at a town meeting, the committee reported in favor of withholding, and a vote was passed to withhold it.

About the same time, at the request of many, Mr. Todd commenced public worship, and preaching, in a place provided for the purpose, for such as chose to attend.

At a meeting of the church, held at the house of their Pastor, April 5, 1826, the following preamble and votes were passed.

"Whereas this church, some time since, voted that, in their opinion, our reverend Pastor has a right to supply his pulpit, during his indisposition, with such assistance as he should think proper; and whereas a committee, elected by the town, have taked measures forcibly to debar our reverend and beloved Pastor from enjoying this right; and whereas our Pastor does not think it consistent with his age, his character, and his sacred office, to claim his pulpit against force;

"Voted, that this church are deeply grieved at such conduct; and that for this and other reasons, the church deem it best to postpone the communion for the present."

On the seventh of June, the minority of the church had the sacrament administered at the meeting house.

Before this was done, the Pastor of the church, Dr. Chaplin, sent a remonstrance against it, to the junior deacon, as being a violation of church order.

The church, by vote, approved of the remonstrance of their Pastor, and declared themselves aggrieved by the disorderly conduct of the minority.

In view of the preceding facts, the committee of the church submit the following inquiries:

1. Do the Council think that this church has as yet taken any steps that are not strictly ecclesiastical, and do they in general approve of the measures, which this church have pursued?

2. In times of difficulty, and at any time, has not a church a right to decide when, and where, and how often, its sacraments shall be administered; and had not this church a right, in existing circumstances, to postpone her communion?

3. Do the Council think that, by absenting themselves as individuals from worship in the old meeting house, in existing circumstances, this church has, in any way or measure, forfeited its character and rights as the church of Christ in the first parish in Groton; and do this Council think that the claim of the minority of this church to be considered the first church in Groton, can or will be sustained by civil or ecclesiastical power?

4. Do this Council regard the minority of this church as having walked disorderly, and what course do they advise the church to take concerning them?

In conclusion, the committee say—"If we know our own hearts, we do not wish to contend for party feeling, or for worldly victory; but, believing the Bible to be literally and fully the word of God, and that Jesus Christ, and his blood, can alone redeem the soul from death, we cannot, in conscience, sit under Unitarian preaching, nor can we be willing to die and leave to our children such an inheritance. We

are fully convinced, that if Unitarianism is right, we are wrong; and that there is no middle ground on which we can stand."

The Council, after much prayerful deliberation, in view of the magnitude of the subjects referred to their consideration, and the great inconvenience to some of its members of protracting its present session; deem it best to result at present only on those points in which the church most urgently need advice, committing the great principles involved, to a committee, to report at an adjourned meeting of the Council.

We are ready now to express our opinions to the church on the following points, viz. we think that this church in its public acts respecting existing difficulties, has conformed to the principles of the Gospel, and to the settled order of our churches, and has forfeited none of its privileges; and, in general, we approve of the measures adopted by this church and its Pastor.

Our advice to this church as to present measures is; first of all, that they, humbly, and fervently, and daily, look to God for the guidance of his Spirit in a time of extreme difficulty, and amid circumstances so much adapted to awaken unhallowed feelings. And that they cherish a spirit of meekness and candour and fervent piety, as becomes the disciples of Christ.

Voted, That a committee of three be appointed to prepare a more full result, and report at an adjourned meeting.

Rev. Dr. Beecher, Rev. Dr. Porter, and the Rev. Mr. Fay, were chosen.

Voted, That when this council adjourn, it be to this place, on Tuesday, the 22d day of August next, at 2 o'clock, P. M.

The Council was accordingly adjourned.

E. Porter, *Moderator.*

Warren Fay, *Scribe.*

William G. Lambert, *Assis't. Scribe.*

Tuesday, August 22, 1826. The Council met agreeably to adjournment. The Council was led in prayer by the Rev. Dr. Porter, Moderator.

The committee appointed at the previous meeting to draw up a full result of Council, on the questions submitted to them, made a written Report, which was unanimously accepted, and is as follows:

To give a satisfactory answer to these questions, it seems necessary to ascertain the general qualifications for membership in the church, as instituted by Christ, and the nature and rights of the Congregational churches of New England, as established by our Fathers, as modified by their connexion with towns and parishes, by the laws of the State, and by various judicial decisions.

We are aware that the organization of the primitive church, can have no legal bearing in the present case; but when good men are called upon to decide whether they will stand for their rights, or give them up for the sake of peace, it is a matter of vast importance, whether they are concerns of human wisdom, which may be given up, or things of divine appointment, which may *not* be given up or changed,

let the consequences be what they may. An exposition of the ecclesiastical polity of New England is the more important, as it is not the result of accident, but of deep wisdom, earnest prayer, and much experience, in circumstances which never have existed before, and never can exist again. The corrupting alliance of the church with the secular powers, had taught our Fathers what were the evils to be avoided; while a new world, unoccupied by old establishments, afforded them a fair opportunity of restoring the church to its primitive purity and order. The result has been the unparalelled prosperity of New England, in a civil and religious point of view. And yet, illustrious as has been the result of this far famed and much eulogised experiment, the vital principle of this religious system is assailed, and, without an earnest and united defence by the children of the Pilgrims, will be destroyed. Shall this be done? Shall the light of such an example be extinguished? Shall the certainties of such an experiment be abandoned, for the theories of unsanctified reason, and vain philosophy? Man has but little prospective wisdom; and when, through mist and twilight, he has groped his way to experimental knowledge, it is not lightly to be thrown away. The ancient decisions of courts, are preserved to enlighten the footsteps of succeeding ages; and an innovation on ancient institutions, whose general utility has been tested by wise men, is always to be resisted.

We feel the deeper interest in this subject because, upon the present generation devolves the responsibility of deciding, whether the religious institutions of our Fathers shall be perpetuated, or abandoned; a decision, which cannot but deeply affect the interests of civil and religious liberty throughout the land.

With respect to the nature of a Christian church, and the qualifications for membership, according to the Gospel, and the primitive Fathers, there can be, in our apprehension, no room to doubt. No fact can be more indisputable than the requisition of credible evidence of piety. Jesus Christ uniformly declared the holy and spiritual nature of his kingdom, as not of this world; and declined all civil jurisdiction himself, and taught his disciples to do the same. It was his avowed purpose to render his religion and worship universal: but such an event, accomplished by human instrumentality, required a select organization of his real friends. The world, in its best form, is neither so religious in principle, so pure in morals, nor so interested in the prosperity of the Redeemer's kingdom, as to be a safe depository of such a trust. The truly pious are the only persons proper to superintend the concerns of pure and undefiled religion. Hence, repentance towards God, and faith in our Lord Jesus Christ, were, in the apostolic ages, universally required as the condition of membership in the church; and the persons enrolled as church members, are denominated the "Light of the world—The salt of the earth—The pillar and ground of the truth—Beloved of God—Saints, full of goodness," &c. The primitive churches loved one another as the members of civil communities do not; and watched over their members as civil communities cannot, and will not. To attempt the maintenance of church government by towns and parishes, would be as hopeless, as it is ridiculous.

It is supposed by some that those strong epithets in Scripture which

we regard as describing a change of character, are only the bold figures of the East, to denote conversion from Judaism to Christianity. It may suffice here to say, that a similar change is required and recognised in the Old Testament; that the ground of it is sinful character; that the efficient cause of it is the power of God; and that the effect of it is a state of the affections wholly new towards God and man. From these considerations it is apparent, that the primitive churches were composed of persons professing, and affording credible evidence of, godliness.

Our next inquiry respects the nature and rights of the Congregational churches of New England, as instituted by our Fathers.

We have seen what were the qualifications for membership in the primitive churches, and we know that it was the object of our Fathers, in coming to this land, to establish churches after the primitive model.

We possess, also, the views of the whole body of Puritan non-conformists in the confession of their faith, formed in the latter days of Queen Elizabeth, in which they say, "Let them only be admitted to the communion, who have made a public profession of their faith, and submitted to the discipline of the church, unless they shall bring letters testimonial from some other place."* Our Fathers belonged to this body before their exile, and in crossing the ocean on purpose to establish it, we are not to suppose that they changed their opinion. It is well known that the Puritan Fathers of New England were Calvinists; and that two fundamental doctrines of the Calvinistic system are the entire alienation of the heart from God, and the necessity of a change of heart by the special influences of the Holy Spirit. Now can it be supposed that our Fathers, being Calvinists, did not consider Christian character as indispensable to church membership? And if they did, is it possible that they should have established churches, composed of all who dwelt within town or parish limits, or attended public worship in the same place?

But we have documentary evidence; ecclesiastical writers, of high eminence, from the first to the fourth generation, give ample and unequivocal testimony.

Norton, one of the first ministers of Boston, and a man of eminent piety and influence, and who wrote at the unanimous desire of the ministers in this country, says, "A particular church, is a meeting of the faithful, united by a visible covenant for maintaining the faith and ordinances of the Gospel, according to the order or policy of the same." This he proves by the following argument. "The form of a church must be constituted, either by a covenant, or by parochial cohabitation, or by meeting in the same place for public worship, or by a simple profession of godliness (without covenant), or by baptism. *Not* by cohabitation—*Not* by meeting in the same place for public worship; because Turks and Papists and Heretics may inhabit the parish, and meet in the same place of worship—*Not* by a profession without a covenant—*Not* by baptism—Therefore *by covenant*. Responsio, p. 22.

Davenport, first of New Haven, and afterwards of Boston, says, "It is the will and appointment of Christ, that all and only such grown persons be admitted members of particular churches, who make such

* Neal's History of the Puritans.

public profession of their faith as the church may, in charitable discretion, conceive hath blessedness annexed to it, and is such as flesh and blood hath not revealed to man, but our Heavenly Father.

"The children of the church, who were baptised in their infancy, when they come to be of riper age, must hold forth, publicly, their confession of faith, that they may be admitted to the Lord's table, and fellowship in voting and in elections and censures in their own personal right; and, if they fail to do this, and seek for communion, they are to be declared non-members.

"It is the will and appointment of Christ our Lord, that his churches under the New Testament be constituted, in respect to their essential form, by the public and mutual covenanting of the saints with one another and with the Lord."

"Hence, this is not sufficient to make one a visible member of this or that church, that he is joined to it in hearty affection, or in a neighbourhood of habitation, or in an ordinary hearing of the word preached among them."

"The Baptism and profession of the doctrines of faith, with freedom from public scandal, do not formally constitute a church, nor make one a visible member of the church."*

The venerable Hooker, the father of the churches in Connecticut, says, "Visible saints are the only true and mete matter whereof a visible church should be gathered, and confederation is the form." He gives other particulars about church organization and power, and says, "In all these I have leave to profess the joint judgment of all the elders of the churches on the River, (Connecticut), of New Haven, Guilford, Milford, Hartford, Fairfield, and of most of the elders of the churches in the *Bay*, (Mass.), to whom I did send in particular, and did receive approbation from them, under their hands. Of the rest to whom I did not send, I cannot so affirm; but this I can say, that at a common meeting I was desired by them all to publish what I now do."† Concerning the *matter* of a church, he says, "Parish precincts, or the abode and dwelling within the bounds and liberties of such a place, cannot give a man a right, or make him matter fit for a visible church.

Reason 1st. No civil rule can properly convey over an ecclesiastical right: but a man's rights by location are civil rights, by inheritance or purchase. Therefore this can give him no right to church fellowship.

Reason 2d. That right which a man hath to church fellowship, excommunication can and doth take away. But excommunication doth not, nor can it take away a man's civil rights. Therefore [the right obtained by civil location] is no ecclesiastical right.

Reason 3d. If parish precincts should have right to church fellowship, then Atheists, Papists, Turks and profane ones, who are enemies to the truth and church, yea, men of strange nations and language, who neither know nor be able to do the duties of church members, should be fit matter for a church, because they have abode in such places." "Visible saints only are the fit matter appointed by God

* Power of Congregational Churches, pp. 22, 23, 42.

† Survey of Church Discipline. Preface.

to make up the visible church;" and by visible saints he explains himself to mean, those who afford to men satisfactory evidence of real piety.*

Cotton, who wrote in 1648, inquires, "What is the church of the New Testament?" Ans. "The church of God is a mystical body, whereof Christ is the head, and the members are saints, called out of the world, and united together in one congregation, and by holy covenant, to worship the Lord, and to edify one another, in all his holy ordinances. Christians, truly regenerate by the Spirit of grace, and *none but* such, are members of the visible church."

"Such, and such only, are lawfully received as members into the fellowship of his visible church, who do before the Lord and his people, profess their repentance and faith in Christ, and subjection to him in his ordinances. Such as are born and baptised members of the church, are not orderly continued and confirmed, unless when they grow up to years, they do, before the Lord and his people, profess their repentance and faith in Christ Jesus."†

Cambridge Platform. This was framed and adopted by a synod composed of the churches of Christ from the "four famous colonies in New England," assembled at Cambridge, A. D. 1648, only twenty-eight years from the first landing at Plymouth, and less than twenty from the formation of most of the churches which existed at that time in New England.

Definition of a church. "A Congregational church is, by the institution of Christ, a part of the visible church militant, consisting of a company of saints by calling, united into one body by a holy covenant, for the public worship of God, and the mutual edification of one another in the fellowship of the Gospel.

By saints we understand, not only such as have attained to the knowledge of the principles of religion, and are free from gross and open scandal, but do also, together with their profession of faith and repentance, walk in blameless obedience, so that in Christian discretion they may be accounted saints by calling." Platform, edit. 1808, p. 22.

"Officers are to be called by such churches whereunto they are to minister. Of such moment is the preservation of this power, that the churches exercised it in the presence of the Apostles. The choice of such officers belongeth not to the civil authority, as such, or to Diocesan Bishops or Patrons." p. 35.

"All are bound in duty to contribute for the support of the Gospel; but the church can require it only of her own members, it being the office of the civil magistrate to enforce that duty on others." p. 43.

"Magistrates have power to call a synod, by calling to the churches to send forth their elders and other messengers to counsel and assist them in matters of religion; but yet the constituting of a synod is a church act, and may be transacted by the churches, even when civil magistrates may be enemies to churches and to church assemblies." p. 59.

"As it is unlawful for church officers to meddle with the sword of the civil magistrate, so it is unlawful for the magistrate to meddle with the work proper to church officers." p. 61.

* Survey of Church Discipline, pp. 13, 14. † Cotton on Holiness, p. 1.

A synod in Boston, in 1679, voted unanimously, that they did "approve the platform of church discipline." In the same year it was approved by the General Court, and ordered to be "printed for the benefit of these churches in present and after times."

These quotations prove, that the churches, known in law, were distinct from towns, and parishes, and precincts, and composed only of persons credibly pious, united by covenant, and possessing the right of pastoral election, according to the Platform.

The meaning of the word church, as used in the ancient records of Massachusetts, is, then, clearly defined. It does not mean the whole civil community, within town or parish limits, or any who may choose to be judges of their own qualifications, and to demand church privileges: but the primitive churches of New England were composed of such, and such only, as gave credible evidence of regeneration; of which the churches, with their pastors, were the judges.

Dr. Increase Mather, was of the second generation of New England ministers, but personally acquainted with ministers and churches of the first generation. He was President of Harvard College. His account of the order of the churches is as follows:

"The principles of those who are for the Congregational discipline, are such as these. 1. That a particular church, as to the matter of it, ought to consist of such as are, in the judgment of rational charity, saints and faithful brethren in Christ. Of such were the churches planted by the Apostles. 2. That the form of a church is a covenant or agreement to walk together in the observation of all the ordinances of the Lord Jesus Christ, which covenant, though only implicit, gives being to a church. Nevertheless, an explicit covenant is most eligible. 3. That a particular church has power given to them by the Lord Christ to choose their own officers, viz. Pastors and Teachers."

He says again, "The ministers of the first generation, who were the first planters of the churches in this part of the world, are all of them gathered to their fathers. So are many of the second generation. I am now the oldest in the province, being in my seventy eighth year. It may, in respect to my age, become me to give a word of advice to younger ministers.

"Children, that which I would say to you is, that, considering your fathers came into this wilderness purely on the account of ecclesiastical discipline, and that, in matters relating to church order and government, they might practise all and nothing more than what there is Scripture warrant for; therefore, do you labour to be well studied in that subject; and let me advise you to obtain the books written by Mr. Cotton, Mr. Hooker, and Mr. Norton, on those controversies."*

He says also, "The truths which respect church order, are they which these churches, above any other, are concerned to maintain. An apostacy from them would, in New England, be a greater sin and provocation to Christ, than in any place in the world."

Again, "Nothing can be more fatal to the interests of religion, than to constitute churches of unsanctified members. This made way for the Anti-Christian Apostacy. When Christianity became the State religion, whole provinces at once were made church members, upon a bare profession of Christianity, without any regard to their sanctity.

* Disquisition concerning Councils, pp. 6, and 17, 18.

And this corrupting of the church, as to the matter of it, was the means of introducing that corruption in doctrine, worship and order, which soon followed."*

Cotton Mather, in his Ratio Disciplinæ, gives a minute account of the practice of the churches from the beginning; in which he declares, that "the churches admit none but such as give them full satisfaction of their being sound in the faith, and persons of a godly life," and that "in the organization of churches, in former times, the brethren exhibited some account of each man's conversion from his unregenerate state, unto serious piety,—a practice," in his day, "not so much insisted on."

That "when a church wants a pastor, they do by prayer ask one of God. Then, upon consultation with the Christian inhabitants of the town, the committee, whom the church usually have to act in their behalf, invite one or more of the candidates to preach."

"In time convenient, the brethren of the church meet, and make out a call. The church, after this, have a meeting with the other inhabitants of their neighbourhood, who are not yet received into the state of communicants, when they do all together put it unto the vote, whether they have no objection against the choice of Mr. A. B. to be the minister of the place, but shall concur to support him in the exercise of his ministry.

"Except a major part of the inhabitants inclusive of communicants, do agree to this latter vote, the act of the church does not, in the law, make the whole taxable."

He states the uneasiness which the right of the church to settle a pastor, in opposition to a majority of the society, by advice of three neighbour churches, occasioned, and proceeds to give the "conclusions, which some of our divines, having been on such an occasion consulted withal, have given.

"1. A body of Christians, associated for all the ordinances of the Gospel, are a church of our glorious Lord, which have, among other precious privileges, a right from him to choose their own pastors.

"2. The churches have recovered this right from the oppression of man, under which many churches of the Reformation are to this day groaning.

"3. To introduce a practise in the election of a pastor, which being followed may soon bring in a pastor to be chosen for a church, which few, yea, none of the church, have ever voted for, would betray, and even destroy, the most valuable right that such a society has a claim unto.

"4. Nevertheless the church in the exercise of its right, ought in all possible ways, consistent therewithal, to consult the edification and satisfaction of their neighbours, especially of those on whose assistance to carry on their affairs, they may have much dependance, and ought so to manage their choice, that if the neighbours have any just dissatisfaction, all the respect, required by Scripture, reason, and gratitude, may be paid unto it."

He states, also, that sometimes the church votes for three candidates, out of which the congregation choose one, so that on whichsoever the choice falls, "the church has chosen him."†

* Gospel Order, pp. 7, 15, 16. † Ratio Dis. pp. 14, 15, 16, 17.

The truth of this account is attested in the preface to the Ratio Disciplinæ, written by his father, Dr. Increase Mather. So that, from the beginning to the year 1726, we have indubitable evidence that the churches were composed of persons credibly pious, in covenant, and possessing and exercising the right of electing their pastor.

The Rev. Samuel Mather, the son of Cotton Mather, in his Apology for the liberties of the churches of New England, shows from the Scriptures and ecclesiastical history, that the primitive churches possessed and exercised the right of electing their ministers, and that the churches of New England possessed and exercised the same right. He closes with an affectionate address to the churches, saying;

"Dear people, the liberties which have been challenged for you, are the same as the brethren in the times of primitive Christianity enjoyed, for hundreds of years; and, whatever specious pretences some may make to the contrary, the dispossessing the brethren of these their valuable liberties was a considerable instance of the Romish apostacy."*

The old colony and province laws of Massachusetts Bay, collected by a committee of the general Court,† confirm these testimonies of the Fathers, concerning the nature and rights of the New England churches.

Chap. xxxix. sec. 1. "All the people of God, who are not in a church way, and be Orthodox in judgment, and not scandalous in life, shall have full liberty to gather themselves into a church estate."

By the phrase People of God, was understood at that day, as it now is, persons of vital piety; and such are the materials of the churches whose establishment is allowed by law, and the being inhabitants of the town or parish, did not constitute men church members.

"Sec. 4. Every church hath free liberty of election and ordination of all her officers, provided they be able, pious, and Orthodox." 1641.

1668. "It is ordered and declared, that every church hath free liberty of calling, election and ordination of all her officers, from time to time, provided they be able, pious, and Orthodox. For the better explanation of the said law, and as an addition thereunto, this Court doth order and declare, and be it hereby ordered, and enacted, that by the church is to be meant such as are in full communion only; and that the teaching officer or officers of such church or churches, we do intend shall be the minister or ministers to all the people in that town, where such church or churches are planted; and that no inhabitant in any town shall challenge a right unto, or act in the calling or election of such officer or minister, until he be in full communion, upon the penalty of being accounted a disturber of peace and order, and to be punished by the court of the shire, either by admonition, security for the good behaviour, fine, or imprisonment, according to the quality and degree of the offence."‡

Here the statute defines the nature of the church, in accordance with all the preceding testimony, as an association of pious persons, united by a covenant; and repeats in 1668, what had been enacted in 1641. That the church hath free liberty of calling, election, and ordination, of all her officers.

* Apology, p. 43.

† Nathan Dane, William Prescott, and Joseph Story, who say that these ancient laws are useful as deciding upon all rights and titles which vested at the time they were in operation. p. 3.

‡ Col. Laws, p. 104.

In 1692, the right of electing the pastor was taken from the church, and given to the society; placing things in the situation in which they now stand, according to the late decision. But, as the method proposed was in divers towns found to be impracticable, it was repealed the next year, and the church and society were invested with equal power in the election of pastor. This was followed two years after by the law of 1695, which gave to the church the right, in disputed cases, to settle a pastor, with the advice of a council. Here the controversy ended: and this state of things remained till 1780, a period of 85 years; in which it does not appear that an instance occurred in which a minister was settled by the church, in opposition to a majority of the society, or by the town or parish in opposition to a vote of the church.

In addition to all this evidence, we have the confessions of faith, and covenants, and records of many of the most ancient churches; all of which recognise the church as composed of persons credibly pious, united by covenant, and authorised to elect their own pastor;—an association wholly distinct from town or parish, from the beginning.

The First Church of Christ in Boston.—August 27, 1630, this church was organized at Charlestown. A fast was appointed, a covenant formed and subscribed, probably by sixty-four men and half as many women. The covenant is as follows:

"*In the name of our Lord Jesus Christ, and in obedience to his holy will and divine ordinance,*

"We, whose names are here underwritten, being by his most wise and good providence brought together into this part of America, in the Bay of Massachusetts, and desirous to unite into one congregation or church, under the Lord Jesus Christ, our head, in such sort, *as becometh all those whom he hath redeemed, and sanctified, to himself*, do hereby, solemnly and religiously, as in his most holy presence, promise and bind ourselves to walk in all our ways according to the rule of the Gospel, and in all sincere conformity to his holy ordinances, and in mutual love and respect to each other, so near as God shall give us grace."*

The following votes show, that this church possessed the sole power of electing her pastors, and of managing all the secular concerns of the church, from the beginning until the year 1730.

"Until now," 1730, Mr. Emerson says, "the church, that is, the male communicants, were alone concerned in fixing the ministers' salaries, and, in short, in making all pecuniary appropriations. But, in this year, it was voted, that, whenever there is occasion for money to be raised, the congregation be notified to meet with the church in the doing of it."†

1667. "At a meeting of the congregation,‡ it was nominated, that Mr. James Davenport, of New Haven, be a teaching officer among us."

1670. "Mr. John Oxenbridge, was chosen, by unanimous vote of the church, to be pastor to them."

1778. "The church, by unanimous vote, made choice of Mr. John Clark, to be their pastor."

* Emerson's History of the First Church, p. 11. † Emerson's Hist. p. 147.

‡ The church is often so called, in the early records, in reference to its popular mode of government—by vote of the male communicants, as contrasted with a government by Episcopacy, or by an Eldership and Presbytery. The same meeting, a few paragraphs after, is called the church.

"Jan. 25. Those of the congregation, who statedly meet for divine worship, with the first church of Christ in Boston, being called together, unanimously concurred in the above vote."*

The following vote, as well as the original covenant, shows, that a credible profession of regeneration, was, from the beginning, the condition of membership.

"The following question was proposed, 9 June, 1730, which, though not decided immediately, was finally passed in the affirmative, 'Whether, in case any particular persons appearing, in a judgment of charity, visible saints, and offering to join with this church in full communion, do seriously scruple the practise of making a relation, as usual at admissions; whether, in such cases, it be your mind, that persons shall be left to their christian liberty, and admitted without obliging them to comply with the said custom; provided always, that they do make a publick profession of their *faith* or belief, and that the elders do declare their having received satisfaction by *private examination*, as to their knowledge and *experiences* in religion?'"†

The Old North.—This church was formed by a covenant, and had the sole power of electing her pastor.

1697. "This day the church voted a letter of admonition to the church in Charlestown, for betraying the liberty of the churches, in their late putting into the hands of the *whole inhabitants* the choice of a minister."‡

This was about the time the parish controversy was up; and is an ample testimony as to what had been considered the rights and usages of the churches before, from which it seems the church in Charlestown had departed.

"It was not until 1769, that the conjunction of church and society, in the management of their temporal concerns, took place."§

New North.—This church was organized by a covenant, in which they express their assent to the "confession of faith received in our churches;" and say, "We give ourselves to the Lord Jehovah, who is Father, Son, and Holy Ghost," &c.‖

July 9, 1730. A committee was appointed to examine whoever might be a candidate for settlement, "concerning his Christian principles, both doctrinal and disciplinary;" and they say, "Forasmuch as several important doctrines of Christianity are vigorously opposed by Deists, Socinians, Arians, and Arminians, the committee will particularly demand the most explicit confession of his faith."¶

August 2, 1714. Mr. Webb was elected pastor *by the church.* "Immediately after which, the election was communicated to the congregation, who were convened *in another place*, and they 'universally' concurred in the choice."**

May 13, 1719. "Voted, 1. The church shall go before and lead in the choice, (of a pastor,) *according to the professed principles and practice of the churches in New England.*"

2. They express themselves willing, that the brethren of the congregation should join them in the call of a minister. "That is to say, *after* the church have expressed their satisfaction with any particular

* Records of the First Church.
‡ Ware's History of Old North, p. 49.
‖ Elliot's Hist. Notices, p. 45.
** Elliot's Hist. Notices p. 7.
† Emerson's Hist. p. 175.
§ Ware's History of Old North, p. 53.
¶ Elliot's Hist. Notices, p. 18.

person, we are willing that a major vote of the church and congregation, *assembled together*, shall determine whether the person chosen shall be settled."*

The Church in Newtown, now Cambridge.—This church was constituted by the members making a profession of faith, declaring to each other what work of grace the Lord had wrought in them. Then the covenant was read, and they all gave a solemn assent to it.†

The Old South.—This church was gathered by a covenant, May, 1669. Property was given to, and arranged and disposed of by, the church, i. e. the body of communicants *alone*, for the first fifty years. There is no evidence from the records, of any congregation, assembling to transact any business till 1723, though there is evidence of there being persons in the habit of attending worship there, who were not church members. And when a congregation is mentioned as assembling, it is, at first, solely to raise money to help the church support the ministers. And in these instances the church generally voted first, and then asked the concurrence of the congregation. There is no instance on record of any meeting of the congregation, to concur with the church in the election of a pastor, until May 12, 1760, when the church voted, "That the choice which the church had made, be laid before the brethren of the church and congregation, for their concurrence." It is added, "The congregation met, and concurred with the choice which the *church* had made, of the Rev. Mr. Cummings."‡ This mode of proceeding, it appears from the records, has been pursued ever since.

Many more examples might be given, of the formation of the early churches, by covenant, and the manifestation of credible evidence of piety, and of their power in the election of their pastor; but it would be superfluous. No historical fact is more notorious; and in most of the Congregational churches, the same course has been pursued, and the same rights enjoyed, to the present day.

Thus, according to the testimony of all the ecclesiastical writers of the four first generations of New England, who wrote professedly on the subject of the nature, order, and rights of the church; and from the Cambridge Platform, framed 1648, and ratified by the churches, and recommended by the government; and from the confessions, and covenants, and records, of ancient churches, it appears, that, from the beginning, the church was composed of such persons only as made a credible profession of regeneration, in the Calvinistic sense of the term, and were united in a covenant; that our Fathers came hither professedly to organize and establish churches wholly independent for existence upon any civil association; and that the right of electing their pastors was claimed and exercised by the churches, and recognised and confirmed by law, first in 1641, about twelve years from the commencement of the colony of Massachusetts, and again in 1668, after the commencement of the parish controversy, and again in 1695, at the close of it; and that the churches continued in the uninterrupted enjoyment of this right until interrupted by the late decisions, a period of about 115 years.

It appears also, that, from the beginning, our Fathers did, by design, and as a mattter of conscience, both in theory and in practice, make and observe the distinction between the town or State, as a civil com-

* Elliot's Hist. Nots. p. 9. † Winthrop, vol. i. p. 180. ‡ Records of Old South Church.

munity, and the church as a religious community. They discriminated accurately between civil and ecclesiastical power; and though they were church members, they would not, and did not transact church or ecclesiastical matters in town or parish meetings. The town or parish is never called the church, nor the church called the town or parish. The town or parish never met as a church for the election of a pastor, nor the church as a town or parish, to make the civil contract with him, and make provision for his support. But, since the alliance of 1695, the two bodies, the church and the town or parish, have been accustomed to meet at different times, and commonly on different days; the one to act as a church, and the other as a civil community, in the settlement of a pastor. The Platform decides that the power of taxation for the support of the Gospel is not in the churches, but with the civil power. The evils of managing the ecclesiastical and the civil power in the same community, as in the church of England, made our Fathers definite and strenuous on this point. The two bodies might and did co-operate. But even though composed of the same persons, they kept ecclesiastical and civil matters wholly distinct. The town or parish kept the town or parish records, and the church kept her own records, entirely distinct. All the signals and evidences of distinct and independent bodies have been kept up from the beginning. Nor have they, in any instance, confounded the distinction between the church and the congregation, but observed it carefully, and declare, as we have seen, from generation to generation, that neither parochial cohabitation, nor meeting for worship in the same place, do constitute membership in the church.

We are aware that different opinions have been advanced on this subject, and by those whose learning and legal science entitle them to high respect, and in such circumstances as give to their opinions the force of law.

"The term Pastor," it has been said, "is correlative to flock, and the flock is composed of all whom it is the minister's duty to instruct and reprove, and these are the inhabitants of the parish. They compose the flock of which the minister is the pastor." Mass. Reports, Vol. ix. p. 299.

By another authority it is said, "Hitherto we have gone upon the ground that, at the time when the earliest of these grants were made, there was a body of men in *Dedham* known by the name of the *Dedham Church*, distinct from the society of Christians usually worshipping together in that town. But in reverting to the history of those times, reason will be found to doubt the application of the term church, as used in the grants, in the precise and limited sense in which it is now used.

"Probably there was no very familiar distinction at that time between the church and the whole assembly of Christians in the town. We have had no evidence that the inhabitants were divided into two bodies of church, and society or parish, keeping separate records, and having separate interests.

"In the year 1631, ten years only before the earliest of these grants, it was provided by a colonial law, that no inhabitant of the town should have the political rights of a freeman, unless he were a member of some Orthodox church. The presumption is violent, then, that almost, if not quite all of the adult inhabitants of Dedham and other towns

were church members;* and a grant to the church under such circumstances, could mean nothing else than a grant to the town,† except that a designation of the use of the property may be inferred from the denomination of the grantee. That this was the state of things will not be doubted by those who look into the ancient tracts and writings respecting the churches in New England. Before the migration of our ancestors to this country it is believed a Congregational church was, as it was in the earliest times of Christianity, an assembly of Christians meeting together in the same place for the public worship of God, under the same minister or ministers." A Mr. *Wise* is then quoted as saying, that the "parochia" of the primitive age, is the same with parish in the New England sense; and that all the people of the parochia or diocese met in one place to worship, received the sacrament, acted in church discipline, and when the Bishop died *all the people met together in one place* to elect a Bishop. The whole diocese met together to manage church affairs.—"Such (it is said) was the church in the early times of Christianity, and such, it is presumed, was the church, as understood by our ancestors, in the first settlement of this country."

"No doubt the more pious part of the congregation soon had occasion to withdraw from those they deemed profane and immoral, or who denied some of the doctrines held to be essential, and to establish a distinction by particular covenants or professions between the more serious and devout Christian, and him who was thought to be such in name only. *And this necessity originated the distinction between church and congregation, which was afterwards and is now so well marked and known.*

"From the account of this ancient state of things, it may be conceived, that a person intending to give property to pious uses, and particularly for the support and maintenance of public worship, within the first half century after the migration of our ancestors, would denominate the donees the church, meaning the whole society of worshipping Christians, and if his donation should be afterwards applied to the use of a few Christians who had constituted themselves the church, instead of the whole society, his bounty would be perverted."‡

According to this account the following positions would seem to be settled:

1. That the churches in the primitive age included as church members all the people, who dwelt within the local limits of the parochia.

2. That in England before the migration of our ancestors, a Congregational church included all the people within given local limits, or the whole congregation which worshipped in the same place.

3. That the church as at first understood by our ancestors, included all the people of the town or parish, all the congregation or assembly which worshipped in the same place.

* Some of these grants were made by the town itself to the church in Dedham, and consequently, were given by the town to the town called the church, only to indicate that the property was for religious uses, as if the town itself, as a town, could not set apart property for religious uses without calling itself the church!

† Generally the evil becomes considerable before a remedy in law is provided; and the inference would seem to be, that there were at this early period many who were not church members, and whom it was necessary to exclude from suffrage by law.

‡ Mass. Reps. vol. xvi. pp. 497, 500.

4. That the only churches to whom, for the first fifty years, donations were made, were towns or parishes, called churches to designate the religious use to which the property was consecrated.

5. That the churches now called such, are not churches as organized by Jesus Christ and his Apostles, and by the first Fathers of New England, *but a few Christians of the more pious part of the congregation,* whom the rapid relaxation of morals in these towns and parish churches, constrained to withdraw from the Puritan churches as at first organized; and that donations made to the town under the name of the church, applied to the use of these few Christians who had constituted themselves the church, instead of the whole society, "would be perverted."

To sustain positions so novel, and in opposition to such an array of evidence from the ecclesiastical history of New England, the authority of a single writer is relied on, a Mr. Wise, to whom allusion has been made. But is there no ecclesiastical authority but that of Wise, that the nature and rights of the first churches of New England should be made to depend in law on his single testimony? Why were not Norton, and Davenport, and Hooker, and Cotton, and the Cambridge Platform, and the Old Colony Laws, heard in evidence, before facts of such notoriety and importance as the nature, and order, and rights of the churches of New England were definitively settled?

But what is the testimony of Mr. Wise? His definition of a church is correct. It is "a society of Christians meeting together in one place, under their proper pastors, for the performance of religious worship, and the exercise of Christian discipline, united together by covenant."

And "parochia" or parish, he says, signifies, "IN A CHURCH SENSE, a competent number of Christians dwelling near together, and having one bishop or pastor, or more, set over them." Therefore parish *in this sense,* (i. e.) the church sense, is the same with a particular church or congregation.* "And this," he observes, "is plainly agreeable with the sense, custom, and platform of the New England churches. A whole diocese is one parish, it not exceeding, in ancient times, the bounds of a parish or a small town. All the people of the diocese did every Sunday meet together, in one place, to celebrate divine service. The whole diocese met together on Sunday when he (the Bishop) gave them the Eucharist. All the people were present at church censures. None were restored without the knowledge and consent of the whole diocese. They might plead their cause before the whole people. When the Bishop died, *all the people* met together in one place to choose a new Bishop. The whole diocese met together to manage church affairs."

Now to what does this testimony of Wise amount?

1. That the primitive churches were composed of Christians, united by a covenant to maintain the worship of God and the discipline of his church.

2. That generally the members of these churches lived contiguous and within local tracts, called parochia.

3. That the term parochia is used in the ecclesiastical, and not in a

* The church was called sometimes the congregation; meaning the congregation of the brethren.

civil sense, to denote the limits within which the members of the same church lived, who were united in covenant, and worshipped together: not implying that all who lived within those limits were Christians, or met and worshipped in the same place: having no reference to a civil corporation known in law, like the parishes of New England; for he says expressly, that he uses the term parochia in the *church sense;* and we know that, for three hundred years, no civil corporation existed in the Roman Empire like the parishes of New England.

The declaration of Wise, therefore, that the primitive parochia agrees with the sense, custom, and platform, of the New England churches, is true, for he was opposing the attempt to introduce a consociation of the churches, which was supposed to give to a body without the local church some authority over it. It was therefore relevant to his purpose to show that the primitive churches were distinct popular bodies, transacting all church matters within their local limits, and not one complex body composed of many local churches. His testimony, therefore, is only that the church members united in covenant within given limits, called parochia, worshipped and communed together, and administered church discipline, and elected their Bishop, and that in these respects the churches of New England, formed within parish limits, performed all acts belonging to a church, without the interference of any ecclesiastical power. But he does not say that the parochia of the primitive churches and the civil corporations of New England, called parishes, are the same, and that it is according to the sense, custom, and platform of the New England churches for all the inhabitants of the parish in New England to come to the communion, to be present at church discipline, and to transact all church matters. All the people in the ancient, and in the New England, parochia, who do these things, mean all the people united in covenant, for it is in the church sense that his argument required him to institute the comparison, and it is, he says, in the church sense that he does it. The testimony of Wise then is in accordance with all the preceding testimony which has been adduced, viz. That the primitive and New England churches were composed of Christian men, within local limits, who were united in covenant, and exercised within themselves the right of electing their pastor, and of performing all church matters.—But if his testimony had been as it seems to have been understood, it would be invalidated utterly, by the overwhelming power of evidence to the contrary.

We cherish the highest respect for the judicial decisions of the State, and in ordinary circumstances would never question their correctness; it being the glory of New England, that from the beginning, the civil and judicial power has deserved and received the implicit confidence of the people. But the more implicit this confidence is, and the farther removed the people are from the means of judging concerning the correctness of legal decisions, the more urgent does the necessity of investigation become, when the rights and privileges of the churches, for the enjoyment of which our ancestors came hither, are, by judicial constructions of law, threatened to be taken away. By a high sense of duty, and a regard to the preservation of the order and rights of the ancient Congregational churches of Massachusetts, we seem, therefore, in the Providence of God, to be called as a Council, of whom advice is

desired by an afflicted church, to examine some of the judicial inferences, which have resulted from the preceding misapprehension in respect to matters of historical fact.

1. It has been decided that "the only circumstance which gives a church any legal character, is its connexion with some legally constituted society, and those who withdraw from the society cease to be members of that particular church, and the remaining members continue to be the identical church."*

But though it may be true that the churches of Massachusetts have in fact existed, within the limits of a town or parish, (for where else could they exist since the entire territory of the State is thus divided,) it may not be true that the legal existence of the church depended on her civil location within some town or parish. There is no such condition expressed in the ancient laws, and the historical evidence leads to a conclusion directly the reverse of this. It was a dependance of the church on the State, that endangered her purity, and controled her perfect liberty, which induced our Fathers to abandon their country, and pass the ocean, and face the wilderness, that they might establish churches dependant upon no power, but the authority and protection of heaven. They would not have the church depend for her existence, or rights, upon any earthly powers, civil or ecclesiastical. Their fundamental maxim was, that the church is a spiritual community, dependant upon God only for her existence. They felt the denial to the church of the right of electing her pastor, and complained at being obliged to pay for the support of a minister, forced upon them by a civil designation, against their will. And now, coming to this wilderness, on purpose to establish churches independent of the civil power, did they make them dependant for their very existence in law upon their connexion with a civil body; when it was precisely such a power in England, as is now given to towns and parishes, that drove them into exile? Annoyed by indiscriminate communion, and going into the wilderness to establish churches independent of all power but that of heaven; did they forget their errand, and frame laws recognising the church only upon condition of such an alliance with a secular association, as they had come hither to avoid? Did they commit to those whom the law should make voters, in town or parish meeting, all the sacred interests of that kingdom which is not of this world; the high responsibility of maintaining purity of doctrine and discipline, and of propagating the religion of Jesus Christ throughout the earth?

Our Fathers opposed, strenuously, all dependance of local churches upon any external power whatever, civil or ecclesiastical. And though, acting in their civil capacity, they required the town to aid the church, it was as an ally, while they precluded the least civil interposition or control of the church, by the town or the State. The churches existed for eighty years before the towns and parishes were allowed any voice in the election of a pastor; and then the right came in the form of a concession, on the part of the churches, and a compromise, in consideration of the aid furnished by taxation, for the support of the Gospel. And now, did the church depend for her existence and protection in law, upon her alliance with towns and parishes, when she had, for almost an hundred years, enjoyed absolute independence, and was,

* Mass. Reps. Vol. xvi. p. 504.

in fact, the primary institution, for whose sake our Fathers came hither, and to whom these civil associations were made subservient, without the least shadow of alliance, or power of interference, and which were afterwards received into partnership, upon the specific condition, that each should enjoy a *concurrent* vote in the election of a pastor?*

2. It is said that "the presumption is violent, that almost, if not quite, all the inhabitants of the town, were church members; and a grant to the church, under such circumstances, could mean nothing less than a grant to the town."†

But is this a legitimate inference? Does identity of persons, constitute identity of corporations? If so, then the town made donations to the town, for the use of the town. But it has been decided, Milford *vs.* Godfrey, that the two corporations of town and parish, "may both subsist together, in the same territory, and be composed of the same persons."‡ If, then, "quite all the inhabitants of the town were church members," that circumstance would not make the church and the town one corporation, so that property given to the church, "could mean nothing less than a grant to the town." Should all the adult population of our towns, now, become pious, and join the churches, would the towns and the churches become one body? Would the church become the town or the town the church? Could the town transact ecclesiastical matters, or the church manage civil concerns; and would the funds belonging to each become common property? It has been decided by the courts, that a town, as such, "is a civil and political corporation, established for municipal purposes," having, as a town merely, no power to manage ecclesiastical concerns, deriving that power wholly from its parochial character, expressed or understood. "Originally most of our towns partook of both characters, for, as the laws required of towns, as well as of precincts and parishes, the support of public worship under a penalty, so power was given to them to raise money to comply with this requisition; and, until a parish was erected in a town, it has been usual to manage all parochial affairs in town meetings, and by town officers. This shows that towns originally were both of a municipal and parochial character."§ But as the parochial character of towns originated in their legal obligations to support the Gospel, it could not have existed prior to those obligations, and we are told, "that it does not appear that any legal obligation was enacted before the year 1652."¶ Until this time, then, donations made to the church, could have no reference to the town, only as the town might be benefited by the enterprise of a religious corporation, appropriating its own funds for the common benefit. Donations, therefore, made to the church, in the early periods of New England, were not made to the town, but to a corporation of religious persons, united by covenant, for the maintenance of the doctrines and ordinances of the Gospel.

It is supposed, however, that the church was not known in law, as a corporation, holding property for religious uses, until the year 1754.

* The first Church of Christ in Boston, was organized in Charlestown, and removed afterwards to Boston; and it was no uncommon thing for a church to remove from the town of her first location, and carry her church property with her. The Old South Church was also organized in Charlestown.

† Mass. Reps. Vol. xvi. p. 498.

‡ Pic. Reps. Vol. i. p. 98.

§ Pick's Reps. Vol. i. pp. 97, 98.

¶ Mass. Reps. Vol. xvi. p. 515.

And what if it were so? Can a civil corporation take away the property of a religious community, because they are not incorporated? The right to hold property in common is not created by incorporation; it is a natural right, for the convenient and safe exercise of which, incorporation provides the facilities, by giving to several, or many individuals, a legal unity. The Domestic Missionary Society of Massachusetts, is not incorporated; but can the towns, therefore, take possession of her funds?

Besides, the churches may have been incorporated really, though informally. Whatever community is recognised as having a legal existence, possesses all the powers which are implied in the terms of legal recognition. And upon this principle, whoever reads the ancient laws of Massachusetts, might almost as well doubt whether the towns were supposed to possess the power of corporations for civil purposes, as whether the churches were supposed to possess the power of holding and managing property for religious uses.

If it was not the intention of the civil power, that the churches should hold property as corporations, it is incredible that no legal intimation to the contrary was ever made, in the face of such constant and immemorial usaage. But if the government did consider the churches as corporations, to hold property for religious uses, then the consent and usage of one hundred and fifty years, is of equal validity, as an express act of incorporation; for the courts have decided, "That the long acquiescence of parties to a contract, in respect to subjects which might originally appear questionable, is also very justly held to be evidence, that those subjects were originally intended to be comprehended in the compact."

Our Fathers were republicans; but it was not for the enjoyment of civil liberty, chiefly, that they came hither. It was to establish churches, according to the Gospel, and independent of civil and ecclesiastical domination; and all their civil arrangements were subordinate to the interests of the church, as the means are subordinate to the end. It was Zion, which they preferred above their chief joy, for which the civil power legislated, and around which the military power encamped, and for which the prayers of both were fervently and constantly offered. To a great extent, the wars of New England were religious wars. It was the fear of Popery, which roused her so often to lavish her treasure and pour forth her best blood, and which, in times of disaster, arrayed her in sackcloth, and multiplied days of humiliation and prayer. The political sky of the world was explored by our Fathers, with reference to its aspect upon the churches of New England, and it might almost as well be said, that the sun was unknown to astronomers, until the year 1754, as that the churches of New England were not substantially corporations, known in law, until that time. The following considerations would seem to place the subject beyond all reasonable doubt.

The Jewish church, which stood high in the estimation of our Fathers, had enjoyed eminently the rights of property, and, though not a model for imitation, would naturally lead them to take it for granted that the Christian church might, for religious purposes, do the same thing.

The Christian church, from the time she enjoyed civil protection,

had ever been, also, in some form or other, in the possession of property for religious purposes. It was commonly in the hands of the clergy, and often grossly perverted; but the right of the church to hold and appropriate property, was doubtless, by such immemorial usage, made familiar to them.

In the Church of England, of which they had once been members, they had been accustomed to witness the same thing.

It is not strange, therefore, that no act of incorporation should be found in the early statutes. The church being the primary institution, and all laws and civil institutions being established in subserviency to her prosperity, it did not occur to our Fathers, that she could need an act of incorporation. They took for granted her corporate existence, as much as they did their own existence. Nor were they singular in this; many of our most valuable civil institutions, grew up from use, until they came at length into some legal form. The House of Representatives derived its existence from no charter, or formal legal enactment; but grew up silently, from the capacity of a humble committee of consultation, to a powerful legislative body. Hence we find the laws continually recognising the church, in terms which imply substantially a corporate existence, until, as legal accuracy became more indispensable, they gave her technically, what she had possessed from the beginning substantially, a legal incorporation.

In 1641, legal permission is given to form churches.

In 1646, those are made liable to a fine who disturb the peace of the church: and none are allowed to preach statedly, in any place, without the consent of two "organic churches."

For many years, membership in the church was indispensable to the right of suffrage, or eligibility to office.

The act of the church, in calling a pastor, subjected all the inhabitants of the town to the liability of taxation for his support; and the act of an ecclesiastical council, in his settlement, ratified the contract between the minister, and the town and parish, and made the inhabitants liable for his support. Without ordination, by the church, or by a council, a minister could no more recover his salary, than a woman without marriage could recover her dower.

The churches received donations also, from individuals, and from towns, who must have known their existing legal capabilities, as well, at least, as we do; and the fact that these incorporations were inartificial, no more disproves their existence and powers, than "the early [inartificial] grants of the proprietors of towns, which have always received a liberal construction, not only according to the interests of the parties, but conformable to the customs and usages then in force,"* disproves their existence and powers.

The language of the law of 1754 implies, that the churches were corporations before, and was intended to confirm rights, which had come into doubt only by a change of circumstances, rendering technical accuracy more necessary. It is entitled an act for the "better securing grants and donations to pious uses," and is as follows: "Whereas many grants and donations have heretofore been made, by sundry well disposed persons, and in such expressions, and terms, as plainly show it was the intent and expectation of such grantors, and

* Mass. Reps. Vol. xvi. p. 497.

donors, that their several grants and donations, should take effect, so that the estates granted should go in succession; but doubts having arisen, in what cases such donations and grants may operate, so as to go in succession; for ascertaining whereof, Be it enacted, that the Deacons of all the Protestant churches, shall be deemed so far bodies corporate, as to take, in succession, all grants and donations."*

Now this act implies the pre-existence, in reality, of corporate powers in the churches. It says that property had been given to them, intended to go in succession. That some doubts had arisen, concerning the corporate powers of the churches, implying that once there were no doubts on the subject; and to preclude these modern doubts, in the shortest and most effectual manner, they make these powers certain, by an act of incorporation.

It is insisted, however, that the funds given to the churches in the early periods of New England, must be supposed to be given in trust only, to be appropriated for the benefit of the town or parish. But how could this be, when, for many years, no parish existed, and no town sustained any parish character, and no man could be a freeman, or civil officer, who was not a member of the church?

But the grants do not say, that the property is given to the church in trust. It is given to the church, as unequivocally, and unconditionally, as language can frame a donation; and are rights of property thus expressly conferred, to be taken away by probabilities, and presumptive evidence? Can any evidence vacate an absolute deed of gift, but that which proves the transaction fraudulent? Can circumstantial evidence set aside express written documents?

The law of incorporation, of 1754, does not say, nor imply, that the property given to the churches, and intended to go in succession, was given in trust, for the use of the town or parish; or that it shall hereafter be held by the Deacons in trust, for the town. According to that law, the Deacons hold all grants and donations, "whether real or personal, made either to their several churches, the poor of their churches, or to them [the Deacons] and their successors."†

Now it is admitted, that "there may undoubtedly be donations to a church, without any express designation of trust, which, from the nature of the property given, ought to be considered to be in trust, for church uses; such as furniture for a communion table, a baptismal font, &c. The particular use implied from the nature of the property given, would in such case exclude any claim of the parish or society, as such, to such property."‡ But there is no kind of property, which may not, by "its nature, indicate church use." The church is a society of Christians, associated according to the commandment of Christ, for the express purpose of maintaining the doctrines and worship of the Gospel. God has made it their duty, and they have solemnly covenanted, with God, and one another, according to their ability, to support the worship of God, and the preaching of the Gospel. For this purpose, *money* is required, as really as sacramental utensils: and, before towns were taxed, the churches, not knowing on what times their descendants might fall, intended, evidently, to provide funds, which should pass in succession in the church, throughout all generations; so that, if societies, in after ages, would not bear sound doctrine,

* Prov. Laws, p. 606. † Prov. Laws, p. 606. ‡ Mass. Reps. Vol. xvi. p. 496.

and should refuse their co-operation in support of those truths which our Fathers held dear, the churches, in that case, should have in their own hands, some resources to aid them in supporting the faith once delivered to the saints, and for which they had suffered the loss of all things. If, then, the indication of church use, excludes the claims of towns and societies to property given to the church, all funds, given unconditionally to the church, must descend in succession, subject to her discretion.

But were it admitted, that the funds held by the churches were given in trust for the benefit of towns or parishes, they are to be appropriated by the church, in the enjoyment and exercise of all those rights which she possessed at the time the donations were made; and if, when the funds were given, they could not be appropriated by the town, for the support of a minister, without the concurrent vote of the church, in his settlement, neither can they now be appropriated for the support of a minister, without the concurrent vote of the church in his settlement. For the intention of the donor is law; and that intention must be supposed to be, that the property given shall be disposed of according to the laws and usages existing at the time the property was given. But in all instances antecedent to 1780, the church, both by law and usage, possessed the right of a concurrent vote in the settlement of her pastor; so that the condition of the trust, if the funds of the churches were given in trust, would be, that they be appropriated for the benefit of the town or parish, in the support of such a pastor as the town and church shall agree to settle by a concurrent vote.

The simple fact, of holding property in trust does, ordinarily, imply some discretion in the trustee, in its management and appropriation. That would seem to be a novel holding in trust of property, over which the trustee had no power, while those for whom it was held, had the sole power. Why the circumlocution of a nominal trusteeship, if those for whom it is held, do in fact, hold and manage it for themselves? If it was intended that towns and parishes should control the property, exclusively and directly, which was given to the church, why was it given to the church at all?

It is manifest, that the donors considered, that by giving property to the church, for religious uses, it would be placed under the operation of a discretion, somewhat different from that of towns and parishes; and that they gave it to the church on this account. A concurrent vote of the church being, then, indispensable, to the settlement of a pastor, at the time the funds were given, and to the legal appropriation of the funds, held in trust, (if they were held thus,) the same concurrence of the church, in the settlement of the pastor, would seem to be indispensable now, to the legal appropriation of her funds for his support.

It is said, however, that the church cannot divert property given to her, from the use of the town or parish with which she was allied at the time the donations were made, because it must be supposed, that it was the will of the donor, that the money should be expended for the benefit of the town or parish.

This will follow, when it has been proved, that the property was given in trust for the benefit of a particular civil community, provided, also, the church is permitted by that community, to enjoy her own

rights in the appropriation of the property. But should the right of the church, to a concurrent vote be denied, and a minister be employed by the town, whose doctrinal views are in opposition to those of the church, and of those, too, who gave the funds; in that case, the church, driven from the sanctuary of her fathers, and despoiled of her rights by a civil community, has a perfect right to accommodate herself with religious instruction, and worship, in any other place, provided she makes a reasonable provision for the accommodation of the inhabitants of the town, should they choose to attend.

But it is said, that, whatever may have been the rights of the churches before the constitution of 1780, that instrument has impaired them, and enlarged those of towns and parishes; that the exclusive power of electing the minister, is now given to towns and parishes, in language "too explicit to admit of cavilling, or to require explanation, and that all pre-existing laws and usages must bow before this fundamental expression of the public will."*

To this decision, we can by no means accede.

1. Because the rights of the churches, supposed to be impaired by the constitution of 1780, are corporate rights, recognised in law, and enjoyed from the beginning; and which a mere "bill of rights" can no more take away, than it can take away the rights of any other pre-existing corporation, and bestow them upon some other corporation.

2. Because, to our apprehension, the evidence is conclusive, that the people who adopted the constitution, had no intention to impair the rights of the churches, and did not understand the instrument in accordance with the legal construction which has since been given to it. And

3. Because it is not the natural construction, according to the obvious import of terms, and the established laws of interpretation.

The passage in question, is the third article of the bill of rights, and is as follows, viz. "That the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance."†

Now if this article admits of two constructions, one of which encroaches upon rights over which it had no power, and does violence to the known opinions and feelings of the times, by destroying institutions of unparalleled utility, sacred by age; and another, which corresponds with the rights of the churches, and the known sentiments of the age, and upholds institutions of immemorial utility, it cannot be doubtful which is the true construction.

1. The churches, at the time the constitution was adopted, were, and had been, corporations, with the rights of holding property, for religious purposes, and with the right of a concurrent vote in the election of their pastors.

In the beginning they existed, most certainly, independent of any alliance with towns or parishes, and with the rights of electing their pastors. Their alliance afterwards with towns and parishes, was the result of a compromise, made by the churches, as the primary institutions, with towns and societies, admitting them, for peace sake and their aid in taxation, to the right of a concurrent vote with the church-

* Mass. Reps. Vol. xvi. p. 509. † Mass. Reps. Vol. xvi. p. 508.

es in the election of a pastor. With this right of pastoral election, by a concurrent vote with towns and parishes, and the power of corporations, always exercised, and expressly conferred in the year 1754, the churches came down to the year 1780; when, as the construction imports, these rights of the churches were taken away, and bestowed on towns and parishes. And were taken away, too, "by a bill of rights," which, strictly speaking, is neither law nor constitution, but a recognition of certain elementary principles of the social compact. Laws are mutable, and sometimes unjust. Communities, therefore, have thought proper to throw around particular fundamental principles, the guardianship of a bill of rights. But if, in the enumeration of a bill of rights, one part of the community is enriched by the spoils of the other, could this bill of fraud become a bill of rights? What if late decisions had discovered that the bill of rights somewhat enlarged the rights of the eastern half of Massachusetts, and so far impaired those of the western, as to make them wholly dependant on the will of the capital and the region round about, for every civil immunity? Could such injustice in principle, carry with it the force of law? How, then, can the Congregational churches be stripped of their rights, by a "bill of rights," whose object it is to protect from the caprice of legislation the great principles of the social compact, among which the rights of conscience and of incorporations are most sacred?

It has been decided, that "every law, which takes away rights vested agreeably to existing laws, is retrospective, and is generally unjust, and may be oppressive. That the legislature may enact retrospective laws, respecting remedies, but not respecting the rights of parties."

But the third article of the bill of rights, as construed by the courts, is a retrospective law, obliterating rights of the most sacred character, but for the prospect of enjoying which, our Fathers had never come hither, and this goodly land had not been blessed with such holy institutions; rights bought repeatedly with blood, and enjoyed for almost two centuries. Now, though the law of 1754 had not ratified and confirmed the antecedent usages of the churches, and though a simple "non usur" may not divest existing corporations of their rights, yet the unopposed usage of two centuries, may suffice to afford evidence of the concurrence of all concerned, and make rights as unequivocal, as acts of incorporation could do. For the books have decided, that "the long acquiescence of parties to a contract, in respect to subjects which might originally appear questionable, is also very justly held to be evidence, that those subjects were originally intended to be comprehended in the compact." How, then, could the constitution of 1780, deprive the churches of rights which, both usage and law had conferred upon them, for almost two hundred years. But,

2. We cannot regard the constitution as explained, as an expression of the public will, at the time of its adoption; and that for the following reasons:

1. It seems to be a provision to obviate an evil which had no existence, and in opposition to the existing opinions and usages of the day. The law of 1695, giving to town and church an equal vote, had been in quiet operation for 85 years. No complaints were made, no evils were felt, no controversies had arisen between the churches and the towns to call the attention of the people to the subject, and no change,

in respect to doctrine, or church order, had taken place, at all to affect the suffrage of the community. As, therefore, no necessity for legislation was felt, the presumption is strong, that no new legislation was intended, to preclude evils which, for 85 years, had not made a ripple in the stream of public prosperity; and yet, the construction given to the constitution, repeals all the statutes which, from the beginning, had defined the rights of the churches, and bestowed their fostering care upon them, by one short clause, which blotted out their rights, and, so far as law could do it, annihilated their being. Did any body of enlightened men ever repeal statutes of long approved and propitious influences, and in so summary a way, to institute a mere experiment in legislation?

2. The effect of conferring upon either the church or the town the sole right of pastoral election, had been ascertained by experiment, and found to be pernicious.

It appeared, during the controversy on this subject, that both bodies were too powerful in the State, to consist with the exclusion of either from the right of suffrage, in the election of a pastor. The efforts of the church to hold, and of towns and parishes to acquire, the sole power in the election of the minister, produced one of the fiercest controversies that ever raged in the State, until it was composed by the compromise of 1695. Is it to be supposed, that all the framers of the constitution, and all the people of Massachusetts, were ignorant of these facts; that they should attempt again, in 1780, a measure which, from 1660 to 1695, had created a storm in which the ship had well nigh foundered? The internal evidence is powerful, that no such innovation was perceived, or intended, by the framers of the constitution generally, or by the people who adopted it; for the same materials of controversy existed in 1780, as from 1660 to 1695, as recent events have showed, since the law, for thirty years a dead letter, received its present construction, and became a practical rule.

3. If the constitution, as now interpreted, was understood by the people, it is altogether unaccountable that no opposition was made to it, on the part of the churches. For by this construction, a right is taken from the churches for the enjoyment of which our Fathers came to New England, and which the churches composed of their descendants, had, all the way down, regarded as their birth-right; which they could not alienate, without contempt of the liberty wherewith Jesus Christ had made them free. Suppose the bill of rights had read, 'That the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance; but no church shall hereafter have power to elect her pastor, but shall depend wholly upon towns, parishes, and precincts, for her instructors as they shall please to appoint, and all funds heretofore given to the churches, shall be appropriated by towns, &c. for their support;' could such a clause have passed, with silent unanimity, in every part of the State? And yet this is precisely what the legal expositions suppose the people to have done. An event which cannot be supposed to have taken place, without supposing that all the ordinary laws of the human mind were, for the time miraculously suspended. Bodies of intelligent, conscientious men, never give up, spontane-

ously and unanimously, their most sacred rights, or even by coercion part with them, without a struggle? But the construction given to the constitution, annihilates every church in the State, as constituted by the Fathers, and known in law, and sets up in their place, certain civil corporations called towns, parishes, or precincts, whose limits are geographical, and whose qualifications for membership are solely civil; and this, without a note of remonstrance, or the shadow of opposition, or a word which implied the knowledge of such a change, until the exposition of the constitution, thirty years after, brought it to light. Such an innovation upon church order, as in other countries has shaken kingdoms, and in the resistance of which, martyrs have died at the stake, is supposed to have been accomplished, in this enlightened State, only thirty years ago, without a sensation. Was the innovation understood by the freemen who adopted the constitution? Call a convention now, to revise the third article, and it would follow quick the fate of the celebrated tenth, concerning Harvard College.

4. The construction given to the constitution destroys the far-famed and much eulogised religious institutions of our Fathers. There was nothing peculiar merely in their ecclesiastical organization. Other churches had made a credible profession of piety, and a covenant, conditions of membership. And civil governments had claimed before, and exercised, the right appointing church officers, and taxing the community for their support. It is the happy expedient of uniting the energies of the two corporations, religious and civil, for the support of the Gospel, preserving to each its character, rights, and work, without encroachment, and without confusion, which constitutes the peculiarity and the glory of the ecclesiastical organization finally established by our Fathers. The system consisted in the simple expedient of giving to the church and society each a corporate vote in the election of a pastor, rendering a majority of the church, and of the society, at all times necessary for his settlement. This gave to the church the resources of the town or parish, for the support of the Gospel, and gave stability to our religious institutions, without the danger of civil domination, from which she had just fled. While to the towns and parishes, it gave the example, and senatorial influence of a religious corporation, composed of the most pious and influential members of the town, to superintend the concerns of religion, with all that wakeful zeal, and untiring effort, which affection might inspire, and without the possibility of ecclesiastical domination; thus uniting the benefits, and excluding the evils, peculiar to all antecedent systems. This system, silent and harmonious as the spheres, and propitious as the great laws of nature, for 85 years, sustained the institutions of religion, and advanced steadily, all the great interests both of the church and the State, through the perils of Indian, French, and English warfare, until the colonies became an independent nation.

In 1780 this system was to be revised, and then, according to the construction given to the third article of "the bill of rights," it was not revised, but ABOLISHED!!! This safe, natural, and propitious alliance, between the church and the town, for the support of religion, consecrated by prayer, sanctioned by experience, and confirmed by the smiles of heaven, was destroyed. The church, as a corporation of holy men, associated for the maintenance of God's worship and ordinances,

with the power of electing her own pastor, and acting in co-operation with the town or parish, the construction refuses to acknowledge, and confers her rights upon the freemen of the towns, parishes, and precincts, of Massachusetts, whatever may be their religious opinions or moral character. Nor is this all. The construction not only destroys the salutary co-operation of churches and civil communities for the support of the Gospel, by means of co-partnership, and the power of concurrent votes, but renders their formation hereafter forever impossible. No church, composed of pious persons, in covenant, can now exist in alliance with towns, parishes, precincts, or pewholders, without the liability of having her funds sequestered, and her doctrines and her discipline modified, by those who may occupy the same local limits, and worship in the same house, but do not belong to her communion. Thus is the vital principle of our Fathers' policy, the union of the civil and ecclesiastical power, in the maintenance of religious institutions, consistently with the rights of each, destroyed forever.

It had been supposed, until recently, that parochial limits, and the supervision of law, requiring every man to contribute for the support of public worship in some form, were the vital principles of the religious polity of New England. But the multiplication of different denominations has impaired this influence of law; and the law of 1811 has annihilated, in effect, town and parish limits: while experience has disclosed, that the vitality of these institutions lies, not in legal enactments and parish limits, but in churches, composed of pious persons, protected in their rights, while they are sustained by the voluntary co-operation of towns, or congregations, or pewholders, whom their enterprise and moral influence shall have conciliated and drawn around them.

This is the system on which New England must depend, hereafter, for its piety and morality. Where churches exist, and are faithful, a moral influence is exerted on the community, which produces a voluntary co-operation for the support of divine institutions, on the part of those who are not professedly pious. Let the churches be authorised to receive the support of such civil or social bodies, upon condition of a concurrent vote with them, in the settlement of her pastor, according to the law from 1692 to 1780, and the usage of all Orthodox churches to this time, and it is all which they ask, and which the cause of religion requires. Peace and order and piety will still prevail. But let the church be overwhelmed by the world; or rather let the world become the church; and speedily there will be neither church nor congregation. The mainspring broken, the system will run down. While the impulse of past religious enterprise continues, and opposition to the truth produces energy, the forms of religion may be sustained. But let the system of demolishing the churches be carried through, and the power of past religious action be spent, and soon the forms of religion would disappear, and irreligion and profligacy would fill the land.

Again. The construction denies to the church a natural right, inherent in all bodies, of electing her own chief officers. The pastoral office was instituted by Jesus Christ. It is an office in his church, and belongs to no civil community, and is to be filled by a popular election of the church. But allied, as she is by the construction of

the constitution, to civil corporations; and her members voting as they do, only as members of a civil community, the church does not elect her pastor. If she refuses concurrence, it is nothing. If she passes the form of voting concurrence, it is nothing but courtesy. The church, in *no sense*, elects her pastor. But to a civil body, a town, parish, or precinct, is given the sole power of electing the highest church officer. Truly, as Judge Parsons says, "By the constitution, the rights of the town are enlarged, and those of the church impaired."*

The construction also takes from the church all right of judgment in matters of faith, and imposes a creed upon her, against her will. The pastor of a church, is a living creed, more efficacious than written documents; and to impose a pastor, against the will of the church, is, to all intents and purposes, to impose a creed upon her, against her will. The dead letter might sleep and be forgotten, but the living creed must be heard every Sabbath day. Of what avail are the Orthodox covenants, and confessions of many churches, now, in the presence of a living ministry, which despises them? It is in vain to say, that some ministers have no creed. For if this means, that they have no religious opinions, then does the constitution as interpreted authorise the town to impose an ignorant ministry upon the church; and if they have opinions, and do not preach them, then is a dishonest man forced upon the church; and if they do preach them, then is a creed forced upon the church, against her will.

It may be thought, perhaps, that there is no intolerance, nor persecution in this, because the church, if not pleased with the pastor elected by the town, has liberty to leave the sanctuary of her Fathers, and the funds which their piety consecrated, and go out, and build for herself, and settle and support a minister of her own choice. But so archbishop Laud might have said to the Puritans, 'If you cannot conform to our ceremonies, it is no encroachment on your liberty of conscience, to require it, because the world is wide, and you can leave your sanctuaries and funds, and go out to the American Wilderness, and establish "organic churches" there, and settle ministers, and manage worship to your heart's content.' But our Fathers thought it intolerance, that they might not enjoy, where they were, the liberty wherewith Christ had made them free; and the Orthodox Congregational churches in Massachusetts, have the same to say now. 'We are not compelled, indeed, to remain and worship with the town, and hear instructions which we disbelieve; but neither ought we to be deprived of our immemorial right of a corporate vote in the election of our pastor, and be compelled to hear sentiments which we disbelieve, or abandon the sanctuary, and the funds, which our pious Fathers consecrated to God, for the support of such worship and doctrines as we still approve.'

The construction takes from the churches, also, the rights of self-government, and self-preservation, by annihilating the powers of the majority, and recognising the acts of a minority, as the doings of the church. If there be a vital principle in government, it is the right of majorities to govern; and if there be any such thing as anarchy, or despotism, it is found in the prostration of this right. But the consti-

* Mass. Reps. Vol. xvi. p. 510.

tution, as explained, recognises a minority as the church; and gives even to excommunicated members, the name, the utensils, the funds, and the records of the church. Nay more, the right is assumed, virtually, of *making* church members; for, if the civil power can restore excommunicated persons to regular standing, it can, doubtless, add members, or constitute churches, at pleasure. And this, the construction not only implies, but asserts. If the whole church shall refuse a pastor imposed on them by the society, and shall remove from the stated place of worship to another place, "it is competent to the members of the parish, to institute a new church, or to engraft one upon the old stock, if any of it should remain; and this new church would succeed to all the rights of the old, in relation to the parish."*

Finally, the construction destroys the being, in law, of all the Orthodox Congregational churches in Massachusetts. Once, unquestionably, they were independent religious corporations, with the right of electing their pastors, the right of holding and appropriating funds for religious uses, and the power of self-government by majorities, without any civil control. But every one of these vital principles, to secure which our Fathers left their native land and came hither, the law now refuses to recognise and protect; and knows and protects no church, which has any will or power, separate from the will of a majority of the town or parish. As long as the churches will consent to hear such preaching as the towns may impose on them, they may be allowed, "by courtesy," to nominate the pastor. But the moment they shall dissent from a majority of the town, they have no legal existence.

We have heard much, in terrorem, about the despotic power of Consociations, lording it over God's heritage; and much exhortation, we have heard, to stand fast in the liberty wherewith Christ has made us free. But the despotic power of towns, and parishes, over churches, is such as never entered the mind of a Consociation, and is not surpassed by any form of civil domination, practised upon churches by the old despotisms of Europe, at the time of our Fathers' exile. What Consociation ever thought of imposing upon churches, pastors, against their will? of stripping them of their funds, disregarding their discipline, and, without any call or right to judge in the case, reversing decisions, and setting up minorities and excommunicants, in place of the church, which they had, by their own fiat, annihilated? The despotism of Popery, if it were more bloody, was never more arbitrary and absolute, than this construction would make the powers of towns and parishes, over churches.

It is said, indeed, that the subjection of the church to the civil power, is only the infelicity attendant upon all minorities, and is "compensated by the many blessings resulting from a state of society." But this supposes that the church has no corporate existence distinct from the town. Whereas, to the time of the constitution, she was a corporation, and by the construction given to that instrument, her corporate rights, known and protected by law, are taken from her and bestowed upon a mere civil corporation. It is not, therefore, a majority, controling a minority, but it is one corporation authorised by law to usurp the rights of another.

* Mass. Reps. Vol. xvi. p. 503.

5. The construction given to this third article, would seem to be a violation of the established principles of co-partnership. Corporations, as well as individuals, may act in co-partnership. The churches and towns of Massachusetts, in 1692, 1754, and 1780, were independent corporations, known in law. From about 1660, the civil corporations had been liable to taxation for the support of an officer chosen solely by the ecclesiastical; which produced disputes and agitations, until, in 1692, it was agreed and enacted, that each corporation should have a concurrent vote in the election of a pastor. Upon these conditions, they proceeded harmoniously, until 1780; when, as is supposed, the condition, upon which the churches consented to the alliance, is violated, and they are driven from the sanctuary of their Fathers, and stripped of their property, and turned, naked and destitute, upon the world, without a name, or a memorial of their past existence. Now, commonly, when individuals or corporations enter into partnership, one party is not enabled, by law, to swallow up the rights of the other; and if they disagree and dissolve, the joint stock and profits are to be equitably divided. But the church, by consenting to admit the concurrent vote of a secular community, in the election of her own pastor, has lost entirely her own vote, her corporate existence, her utensils and records, and her very name is taken from her, and given to another, whom the parish is competent to institute, or to engraft upon her stock. We can never believe, that the freemen of Massachusetts, in 1780, intended to do any such thing.

6. Once more, it is a strong presumptive argument against the construction given to the constitution, that its utility is confined to extreme cases, while it is admitted by the court, that its general practical influence would be injurious. Now, commonly, laws are enacted on account of their supposed general good tendency. But here, the general influence of exercising the power taken from the churches and given to societies, is deprecated by the expounders of the constitution; and the actual result, so far as it has been reduced to experiment, evinces the correctness of their political foresight. The peace of eighty-five years has been broken by it, and towns and churches, long harmonious and quiet, have been inflamed by passion, and rent by divisions. Nor has the mischief reached its limit; a storm is let loose, whose end and results none can foresee. Some of the certain results, however, are, the multiplication of feeble societies, and the destruction of that regular and efficient support of the Gospel, which was secured by the cordial co-operation of towns and churches, and has constituted the glory of New England. It throws the concerns of religion into hands careless of her purity, and, in the absence of passion, not likely to attend long upon, and sustain, her forms; while the little band, whose piety kept alive the fire upon the altar, and from age to age imbued the public mind with reverence for religion, is driven into poverty and exile.

Besides, it enables a minority of the stated attendants upon the public worship of God, to control the entire church, and a majority of the real, sober, acting, members of the congregation, who feel any interest in its religious prosperity. Unhappily, in every town almost, there are some, who seldom or never attend public worship, men of

infidel opinions, scoffers, sabbath-breakers, and profane persons, men of intemperate habits, without character, without property, unprincipled and dissolute, who hate the light, and come not to the light, lest their deeds should be reproved. And these are the men, often, which go to make out the majority which drives the church, and a majority of the sober, exemplary, stated worshippers of God, from the sanctuary of their Fathers.

By this means, the most sacred concerns of religion, entrusted by our Lord to a select band of holy men, whose love should make them faithful, and whose life should adorn his doctrine, fall into the hands of the unholy, ungodly, and impure. In this way it may happen, that men who behold the inside of a meeting house, only when they turn out to put down the saints, and who rarely speak of religion but to scoff at its ministers, institutions, and doctrines, shall be the men, who decide for two thousand people, who shall be their minister, and what doctrines shall be preached in the town, from age to age. This divesting of the church of her immemorial rights, and throwing the concerns of religion into town and parish meetings, brings down, also, the holy subject of religion to a level with secular concerns, and subjects the election of a pastor to all the violence of passion, and bad influence, and intrigue, which too often attend and disgrace a political election; so that, instead of a pastor, chosen, as once, by the confidential co-operation of the church and the town, a pastor lights upon the people, whom a whirlwind of wrath has deposited among them. Did those who adopted the constitution, lack wisdom to foresee such results; or did they adopt it without perceiving the import which has brought out these latent mischiefs?

The expounders of the constitution eulogize the institutions which the third article destroys, and express a hope that, except in extreme cases, ancient usages may, as a matter of courtesy, prevail. This is as if a law authorising divorce at the will of the husband, should be expounded with an eulogy upon matrimony, and good hopes expressed that husbands would exercise their rights only in cases of necessity.

Much has been said about the rights of towns and parishes, and the effect of "restoring to the churches the power they once enjoyed, of electing the minister, without the concurrence of the people or congregation, or by the aid of a council which they might select to sanction their choice; and, it is said, the people never would consent to be taxed for the support of men, in whose election they had no voice,"—as if the churches now claimed the sole power of electing the minister, and there were no alternative, but to take it from the churches, and give it to towns and parishes. But the fact is, that the law of 1692, giving equal powers to churches and towns and parishes, in the settlement of a minister, had been for eighty-five years the practical rule. And the law of 1695, enabling churches to settle a minister, in opposition to a vote of the town, had, during all this entire period, remained a dead letter, and might have been unanimously repealed at the time the constitution was formed, instead of making it the occasion of taking away, wholly, the rights of the churches, and giving them to towns and parishes.

We shall never understand the merits of this question, or do justice

to the memory of our Fathers, without going back to the age in which they lived, and considering the circumstances in which they were placed. Then doctrinal controversies had no being; and the Papal church was the mighty power which shook the earth. And this tremendous usurpation of the rights of God and man, had come upon the world, as all history testified, by means of a corrupt priesthood, introduced into the churches by secular and ecclesiastical despotisms, established by the usurpation of the rights of the churches in the election of their pastors. Beholding then, as they did, the anti-christian apostacy, deriving the nucleus of its terrific power from the usurpation of the rights of the churches in the election of their pastors; and smarting as they did, in their recent escape from Episcopal despotism; and coming hither, as they did, to restore the church of God to her primitive purity and liberty; and threatened, as the Reformation still was, by the gigantic power of Popery, and as even New England itself was, bounded by French colonies on the North, and South, and West; is it wonderful that our Fathers should guard the door of the church, and the spiritual rights of the church, from secular intrusion, with great decision? They regarded the independence and purity of the church of God, and justly, as the only means of restoring civil and religious liberty to the world. The question of church organization, rights, and duties, was therefore the great question, between Protestants and Papists; and one of greater moment, never agitated the world.

When, therefore, an event, as unexpected as it was alarming, came on our Fathers toward the close of the first and the beginning of the second generation, viz. A suspension of renewing grace, and the multiplication of men, who, though respectable for character, could not join the church, and were impatient of taxation without a voice in the election of their minister, they knew not what to do. To admit unrenewed men to the church, they could not; and at that day they would not come in if they might; and to give to secular communities the power of electing church officers, especially the pastors of the churches, by a joint vote with the church, would soon subject the church to the will of a secular community, and throw her back into the same state from which she had just been delivered by her exile. It was the apparent inconsistency and impossibility of permitting a civil body to vote in the election of a church officer, which made the resistance of the churches for a long time so determined, and held back the churches in Boston, long after those of the country had compromised in 1692. This difficulty was created, by insisting upon universal taxation for the support of ministers, which they did not dare to give up, and their refusal of a voice in their election, which they did not dare to grant. But as soon as the compromise of 1692 had time to disclose its results, the fears of the churches, and the discontents of towns and parishes subsided, and a happier state of society never existed, until the late exposition of the constitution swept away the conditions of concord, and let out again upon churches and societies the occasions of strife and alienation. But even now, there is no need that churches, and towns, and parishes, should fall out by the way. There is, in fact, no contrariety of rights or interests between them, and no occasion for

jealousy or strife. The churches have no desire to possess the sole power of electing a pastor, nor do they desire the right given by the law of 1695, of overruling the voice of the congregation by the advice of a council. They are content with what the law of 1692 gave them, the right of a concurrent vote in the election of their pastors; a right which the law of 1754 confirmed to them, when it made them, by express enactment, what they had been from the beginning in fact, corporations known in law, with rights of property, and of pastoral election. So much power in the churches is indispensable to their existence, as religious associations; and towns and societies are as really interested in the preservation of the churches, as purely religious communities, as the churches themselves are. All the great interests of society are best promoted by falling into hands which are most deeply interested in them, and best acquainted with them. Physicians should doubtless superintend the interests of the medical profession; while agriculture, commerce, and manufactures, may be expected to thrive best under the auspicies of farmers, and merchants, and artizans. And can any reason be assigned, why the dictates of common sense should not prevail in assigning to men, professedly pious, a precedence, at least, in the concerns of religion?

No calamity is greater to a town, than the existence of a church in a low state of religious feeling, lax in discipline, lax in morals, few in numbers, and inefficient in religious enterprise. In such a state, every thing that is good, runs down; and every thing that is wicked, rises. The light in such a church is darkness, and it is great darkness. And yet, the tendency of giving to secular communities, the sole power of electing the minister, is to multiply such churches; as the tendency of the concurrent vote of the churches, is to maintain their purity and moral vigor, for the benefit of themselves, and of society around them.

It has been objected, that the town is bound by law, under a penalty, to settle a minister; which the church, if allowed a concurrent vote, may prevent. But who does not know, that in eighty-five years' experience, such an event never happened; that the law now is nearly, if not quite, obsolete; and if it were not, that it would only assimilate our religious to our civil polity, which is by design not a democracy, but a system of checks and balances. The President of the United States may arrest the passage of a law; so may the Senate, or the House of Representatives; and when it is passed, the Supreme Court may declare it unconstitutional. Why then should the pure and holy interests of religion, be thrown into the hands of the unmingled democracy of town and parish meetings, without a single check or balance, to stay the fury of passion, or defeat the purposes of intrigue, by giving time for piety, and deliberative wisdom, and cool reflection to operate? Towns are as really benefitted by the senatorial influence of the churches in the election of pastors, as the churches are by civil aid in the support of the Gospel; and in all cases of collision, which have come to pass, between the towns and the churches, a way out has been indicated by the resolution of moral forces. Necessity has dictated a compromise, which has ended in peace.

The construction given to the constitution enables persons of

another denomination, living in the town, to usurp the rights of the ancient Congregational churches of Massachusetts.

That those who, hitherto, have availed themselves of the construction, to rob the ancient Congregational churches of their rights, are another denomination, cannot be doubted; for they themselves avow it, and have formed distinct associations to call forth the churches and energies of their denomination, for the extension of their own views of Christianity, at home and abroad.

Nor are they mistaken in supposing themselves a different denomination from the old Congregationalists of Massachusetts; for whether doctrinal belief, or church organization, or both, be the traits of discrimination, they are a distinct denomination.

The ground of separate denomination is, such a difference in opinion, or practise, as renders co-operation impracticable; the prevalence of one set of views being the subversion of the other. But, according to this rule, those who have hitherto divested Orthodox Congregational churches of their funds and places of worship, are a different denomination; for, both in doctrine and in church order, they are so opposite, that the prevalence of the one, is the extinction of the other. And yet, according to the construction given to the constitution, this feeble and recent denomination, living in the same town or parish, with an Orthodox Congregational church, may come into a town or parish meeting, and elect a pastor of their own denomination, and take the sanctuary, the funds, the utensils, the records, and even the name, of the exiled Congregational church.

Should it be said that the members of this new denomination have never withdrawn, legally, from the old Congregational churches; the answer is, that what the law forbids to be done directly, it forbids to be done indirectly; and that both honor and equity, forbid the avowed members of one religious denomination, to usurp the rights of another, merely because they can do it under the cover of law.

These are some of the reasons which convince this Council, that the construction given by the courts to the third article of the "bill of rights," is not a "fundamental expression of the public will," and that the freemen, who adopted the constitution, had no conception of its alleged hidden import. Indeed, there is a tradition, that the first legal expounder of the third article said, soon after having given his first exposition of it; "That when it was framed, he believed it would come to this, though he had not expected it would be in his day; and that the people did not understand the article when it was adopted; and if they had, they would as soon have voted in a hierarchy."

We are informed, also, that "the practise in the [Brattle Street] society, has been, immemorially, for the parish only to choose the minister; church members acting only as parishioners; and the church is requested, as a matter of courtesy, to invite the ordaining council;" and that "As in former times, particularly at the period of framing our constitution, many distinguished citizens belonged to this society, it is not improbable that the constitutional provision emanated from them, for it is exactly conformable to the practise of this society, since its foundation."*

* Mass. Reps. Vol. xvi. p. 511.

However explicit or definite then the language of the bill of rights may be, it must in our apprehension bow before the overwhelming amount of presumptive evidence against the judicial constructions which have been given: for constitutions and laws are not to be interpreted in opposition to universal and approved usage at the time they were framed, without decisive evidence that they were intended to operate as innovations; and it is equally manifest, that laws enacted for the remedy of a local evil, are not, by interpretation, to be extended to sweep away institutions and usages, which, at the time, were not complained of, but regarded as invaluable blessings. These principles of interpretation, are confirmed by high authority. The Hon. Chief Justice Parker, Holbrook *vs.* Holbrook, says, "I have always understood, that it was right and proper to consider the whole of a statute, and the preamble, and the *probable intention of the Legislature,* in order to ascertain the meaning of every particular section; and that this mode of interpretation is justifiable, even where *the words of the section itself may be unambiguous.* Certainly if one section, *however explicit its terms,* if taken literally, would contravene the general object of the statute, it should be restrained so as to be conformed to that object. So also I think if one section should be much more extensive in its operation than the general scope and object of the statute, it may be restrained in its construction within that scope.

"Furthermore, I should think it remarkable, that the Legislature, setting out with a limited object, and providing for one mode of carrying it into execution in the past section of a statute, should in another, *without an express declaration of objects intended to be effected,* by the use of general terms only, *be held to have demolished distinctions which, until the statute passed, were known, practised upon, and inferred, without any complaint or application for relief.*"*

However plain, then, the third article of the bill of rights may be, as it violates known and universal usages, without any evidence of such intention, and in opposition to evidence; that at the time no complaints were made against the order of the churches, which it sets aside, and as it sweeps away the rights of the churches and the usage of ages, while evidently attempting only the application of a remedy to a limited evil; we are constrained to believe that the courts have misapprehended the true intent of the bill of rights, as understood and adopted by the people.

We now come to the question, whether the construction given to the memorable third article of the bill of rights, is the fair, natural, and necessary construction, according to the philosophy of language, and the established laws of interpretation.

There is a construction, of which the article is susceptible, which relieves it of its mischievous practical tendencies, and reconciles the constitution with its apparent design, with the rights of the churches, the spirit of the times, and immemorial usage. There was but one defect in the existing polity, which was supposed to need a remedy, as the law stood before the constitution, and that was the unequal power of the churches in the settlement of a minister, in opposition to

* Pick. Reps. Vol. i. pp. 258, 259.

the towns, by the advice of a council, according to the law of 1695. To remove this unreasonable power, the constitution provides, "that the several towns, parishes, precincts, and other bodies politic, being religious societies, shall at all times have the exclusive right of electing their public teachers," meaning as we believe the people understood it, that the town and the church should possess the right of electing, by a concurrent vote, their own religious teachers, exclusive of any power in one corporation to force a pastor upon the other; meaning by exclusive power, not *sole power*, but a power excluding all coercive control by one religious corporation over another. Any other construction, renders the article absurd and contradictory.

It cannot be denied, that the Congregational churches of Massachusetts were religious societies. They were, also, at the time the constitution was adopted, corporations, or "bodies politic known in law." If, then, exclusive power means sole power, the construction gives to towns, parishes, and precincts, and to churches also, the sole power of electing the pastor, i. e. The town and the church have each, to the exclusion of the other, the power of settling a minister; a right, the practical exercise of which, would be somewhat difficult.

Should it be said that "religious societies" mean civil societies only, the language of the article, fairly interpreted, precludes the evasion; for it enumerates three distinct bodies, which shall possess this exclusive right, viz. towns, and parishes, and precincts; and then it goes on to extend the same right to some other bodies politic besides towns, parishes, or precincts; and, lest it should not be understood what other bodies were intended, it specifies what other bodies politic are intended, besides towns, parishes, and precincts, viz. religious societies which are incorporated, or are bodies politic, for holding property for religious uses. But besides towns, parishes, and precincts, there were no other religious societies which were bodies politic, but the churches. To these, therefore, as really as to towns, is given by the third article the sole power of electing their pastors, if this be the import of the constitution. But if the meaning of the article be, that churches and societies shall each have power of electing their own pastor, by a concurrent vote, to the exclusion of all interference of the one, to coerce the other; then is the obnoxious law giving power to the church to settle a minister by council, in opposition to the society, done away, and the rights of towns and churches, as they had been exercised for eighty-five years, recognised and confirmed, viz. the right of each to a concurrent vote, in the election of their pastor, which gives to each the right of electing its own teacher, to the exclusion of all coercive interference. According to this construction, instead of oversetting the religious institutions of our Fathers, for no assignable cause, and filling the state with contention and violence, rending peaceful towns, and multiplying feeble societies, the constitution simply removes an objectionable feature in the existing legal state of things, and sanctions the remainder; giving to the church and to the town, an equal and independent vote, in the election of a pastor.

That this was the construction given to the article by the freemen who adopted it, is manifest from the fact, that for thirty years they con-

tinued to give this construction to it practically, and were astonished beyond measure when legal ingenuity brought out the modern exposition. When the churches first appealed to the courts, they did it with unhesitating confidence, that they had rights which the courts would not fail to protect.

Now, had the public sentiment dictated, in 1780, the third article as expounded by the courts, and had the freemen understood and adopted it thus, is it credible that not a single society, in thirty years, should have availed itself of its new rights and privileges? Or if, through courtesy, they were waved, can we suppose that their very existence could have been so forgotten, as that, after thirty years, the exposition of the constitution would have struck the entire community as a new discovery?

The construction which we have given, of the import of the third article, affords some definite, intelligible account, of the nature and rights of a Congregational church, of which, according to the other, we have found it impossible to form any settled opinion.

At one time, we seem to be taught, that town, and parish, and precinct, and church, are all one and the same thing; and that these modern select communities of the "more pious part," are "but self constituted" churches, to whom, should the ancient funds be given, they would be "perverted." All which is confirmed by the consoling reflection, that the infelicity of churches, overruled by towns, is only that of being a minority, which would seem to imply, that churches and towns are indeed but one community. And yet, we meet with instances of donations made by towns to churches, as if they were communities distinct from towns, and capable of holding property for religious uses; and in 1754, we find the Deacons of churches incorporated to receive and hold in trust large amounts of church property.

Besides which, the constitution and the courts continue to speak of towns and churches, as if they were distinct bodies, and not the same: the rights of the one "impaired," and the rights of the other "enlarged;" the one a civil, and the other a religious, community, "whose authority should be of that invisible, but powerful nature, which results from superior gravity, piety, and devout example:" all which seem to be verging to the conclusion, that the church and the town are not synonymous. But here, again, we are thrown back upon the opinion, that the town and church are the same, by the declaration "that the term pastor, is correlative with flock, and that the flock is composed of all whom it is the minister's duty to instruct and reprove, and these are the inhabitants of the parish." By such conflicting waves of opinion have we been tossed, during all our investigations of this subject, until we have despaired of discovering what the Congregational church is, or where she is, as known to the laws of the State, as now expounded.

The law of 1800, the first, if we mistake not, which was passed on the subject of religion and the churches, after the adoption of the constitution, adds confirmation to that construction of the constitution which to us appears to be the true one. It is as follows: "That the respective churches, connected and associated in public worship, with

the several towns, parishes, precincts, districts, and other bodies politic, being religious societies, shall at all times have, use, exercise, and enjoy, all their accustomed privileges and liberties, respecting divine worship, church order, and discipline, not repugnant to the constitution."*

It is to be here noted, that none of the late legal expositions of the constitution, had been made in the year 1800, and the uniform practise of the churches had been, for the church to have a concurrent vote with the town, in the election of her pastor; and it was then the generally received opinion, that the churches enjoyed this right by law.

What, then, must the representatives of the people have meant in 1800, when they say, "*that the churches shall have, use, exercise, and enjoy, all their accustomed privileges and liberties, respecting divine worship,* CHURCH ORDER, *and discipline, not repugnant to the constitution?*" It had never then been whispered, or dreamed, that the constitution had "impaired" the rights of the churches, or "enlarged those of the towns." The understanding of the law of 1800 could, therefore, be none other than that the churches should continue to enjoy, under the protection of law, all the rights, which they had been heretofore accustomed to enjoy. HE who subjoined the phrase, "not repugnant to the constitution," knew, doubtless, what *he* meant by it, but even *he* would not, at that time, have dared to tell the people.

But according to this law of 1800, the "accustomed privileges and liberties to be still enjoyed" are specified, and are the rights of "church order and discipline." Now church order includes every part of church organization, and especially, and above all, the election of a pastor, who is also the moderator of the church, and whose influence is ordinarily so great, that whoever has the election of the pastor of the church, has substantially the government of the church. But the law of 1800 guarantees to the Congregational churches of Massachusetts, ALL THEIR ACCUSTOMED PRIVILEGES OF CHURCH ORDER AND DISCIPLINE, which are the election of their pastor and moderator, and the enjoyment of their sanctuary, and the appropriation of their funds. Beside, when the right of electing their pastor, and appropriating funds, and enjoying worship in their sanctuaries, is taken away, by giving to towns and societies the sole power of settling a minister, and controling the house of worship and the funds, what accustomed privileges and liberties are left to the churches, for whose protection the pomp of such solemn legislation is held out? Nothing remains but the simple right of separating from all secular connexions, as our Fathers did when they left England, and going out destitute, to build another meeting house, and settle and support another pastor. And is this all which the law of 1800 intended; simply to exempt the churches from persecution, and to give to them liberty to worship God, separate from towns and societies, if they pleased to do it?

The act of 1800 evidently supposes that the rights of the churches have not been "impaired" by the constitution; and to perpetuate the idea of their sanctity, throws over them anew, the protection of the law.

* Mass. Reps. Vol. xvi. p. 506.

The aged and venerable Dr. Lathrop, of West Springfield, surpassed by few men in candour, discrimination, and an accurate knowledge of the civil and ecclesiastical polity of the State, and who lived long before and long after the constitution of 1780, has left upon record his testimony on this subject, which is pertinent and forcible, and will, we doubt not, be duly appreciated.

"That the church should lead in this business is agreeable to common usage, to ancient statute, and the reason of the case. It is important, that in *civil* society, there should be a public teacher to inculcate the virtues and manners on which the happiness of society depends; such as truth, peace, justice, industry, temperance, and the other moral duties. The *Gospel*, besides requiring the social virtues and duties, teaches the way of salvation, through a glorious Redeemer. In the Christian minister, both characters are united, the *moral* and *Christian* teacher. The church consists of professed *Christians*. They will choose a minister, who believes, and will teach, the whole Gospel scheme. In the *Christian* teacher the purposes of civil society are answered; for the Gospel inculcates all social virtues and moral duties. But the purposes of a Christian church cannot be answered by a mere moral philosopher; for he will have nothing to say in regard to the redemption of fallen men, by the Son of God sent down from heaven. On this reason was founded the statute, which required, that the church should lead in the call of a minister; but at the same time, justly ordered that the town or parish should not be charged with his maintenance without their own concurrence.—Whether this statute now exists in form, or not, I cannot say. Be this as it may, ancient, continued, and general usage may have sanctioned it as common law."*

In conclusion the Council have only to say, that having attended to all the documents, civil and ecclesiastical, which are necessary to enable them to form an opinion, they have come deliberately and unanimously to the following results, viz.

1. That the first church of Christ in Groton, is a church of our Lord Jesus Christ, and invested by him with the right of electing her pastor; a right which she cannot alienate, or surrender to any other body, without disobedience to Christ, and endangering her own existence as a church.

2. That the first church of Christ in Groton is a Congregational church, according to the principles and organization of the earliest churches in Massachusetts, and as recognised in the Cambridge Platform, and in the laws of this Commonwealth.

3. That from the beginning, the Congregational churches were known in law as corporations, distinct from the towns or parishes, with the power of holding funds, and for many years with the *sole* power of electing their pastors.

4. That, from about 1695 to 1780, the alliance of the church with the town or parish, was established by law, upon condition that the pastor should be settled by a concurrent vote of the church and of the society, as two distinct corporate bodies.

* Statement of proceedings in Dedham, pp. 34, 35.

5. That in the year 1754, the churches in this State, thus organized and known in law, were by a special enactment, to exclude all uncertainty, recognised as bodies corporate to hold property; and that, while they were, and always had been, in the legal possession of the right of electing their pastors.

6. That the bill of rights of 1780, cannot destroy corporations and rights established by law, and enjoyed for an hundred and fifty years: and that irresistible circumstantial evidence constrains us to believe, that no such thing was understood or intended by the freemen of the State, who adopted the constitution; that, instead of divesting the church of her immemorial and corporate right to vote in the election of her pastor, the bill of rights does, according to the only construction possible without making the instrument self-contradictory, confirm the rights of the church and society, as they had existed from the year 1692 to 1780.

7. Whether "the civil and religious community," will sanction the decisions of the court, when the facts in the case, with all their tendences, are understood, it is not for this Council to decide. We can only say, that the bill of rights, as interpreted, has the same injurious bearing on all denominations of Christians, who regard evidence of piety as essential to church membership, and do not think that churches composed, or under the control, of towns and parishes, are qualified to answer all the ends which Jesus Christ designs to answer by that kingdom which is not of this world. That, so far as we can learn, but one denomination of professed Christians in the State, have given any evidence of approbation of the law, or sought to avail themselves of it, and that a recent, and, compared with the freemen belonging to other denominations, a very small denomination. We have seen nothing to indicate that the mass of the inhabitants of the State do not approve of the provisions of the law, as it stood before the constitution of 1780;—having adhered to it in practice, for thirty years after the constitution was adopted; and all the towns, and parishes, who had no sectarian object to answer, having, as we believe, without a single exception, pursued the same course to the present time, with great peace and order, while in other instances, strife and division have been the usual result of a departure.

We think, too, that when the amicable concurrence of churches and societies, with independent powers, in the support of the Gospel is interrupted, the glory of New England is departed, and a system abandoned, which above all others ever adopted by man, has produced the noblest results, and is best adapted, in all countries and ages, to elevate the condition of society, and redeem the world.

The amalgamation of the church with the world, in the election of her pastor, may seem a small thing to many; but small as it may seem, the *distinct* power of the church, to elect her pastor and admit or expel her members, independent of any secular alliance or influence, constitutes the mighty secret of uniting, in this alienated world, evangelical doctrine, vital godliness, and pure discipline, with liberty of conscience, equal civil rights, and permanent civil support. A Congregational church and society are the most simple and most wonderful association for the permanent support of the pure Gospel, which the

goodness of God ever enabled the wisdom of man to hit upon. It includes, in their highest degree, civil liberty and religious liberty; and religious and civil equality, and purity, and efficacy, and safety. Unless, therefore, it should seem desirable to the children of the Pilgrims, that the religious institutions of their Fathers should be abandoned; they will, probably, when apprised of the danger which threatens them, apply the remedy which is found so amply in public sentiment and the right of suffrage. And we believe that, when the subject is fairly understood by the freemen, it will appear, that the spirit of our Fathers "is neither dead nor asleep."

We cannot but apprehend, also, that the experience of the past, is beginning to produce a conviction in the minds of those who have been most forward to propagate their peculiar opinions by the aid of legislation, that, in the end, more will be lost to their cause than gained by it. The reaction which is begun, is but begun; and if it be terrible now, what will it become when an extended sense of injury shall have roused and united the entire mass of Christians of all denominations, whose rights are placed in jeopardy?—for of all modes of promoting sectarian views, that of legislation and aggression, is the most hopeless, in a republican government. Should the present state of things, however, continue; and church after church, as the wave of revolution rolls onward, be called to decide whether, for the sake of civil support, they will give up their charter, or trust to the Lord alone in its faithful maintenance; there will be, we believe, but one sentiment, and but one course of action.

8. With respect to the course which the church in Groton should take in regard to her rights of property,—if these only were concerned, a regard to peace and the personal ease of the members, might induce us to advise the church to waive her rights, and in meekness to suffer wrong. But, considering that a right of the church is involved, essential to her existence, which she cannot surrender without violating her covenant with God,—a right, too, which she holds in common with all the Congregational churches in the State,—including also a vital principle of the religious institutions of New England from the beginning, and the source of such unparalleled prosperity; the Council are constrained to advise and to exhort this beloved church, to stand fast in the liberty wherewith God and man hath made her free, and that she contend, meekly, but earnestly and perseveringly, for all her invaluable civil and religious rights.

We are not insensible to the trials and deep afflictions which this church will be called to encounter, in the course we advise. But we trust they will remember, that it is the providence of God which has permitted these trials to befall them, and that, if sustained with Christian fortitude, they may eventuate in signal prosperity to this church, and to all the churches of this Commonwealth, and hereafter in a crown of glory, which Christ the righteous judge shall give.

And, while we tender you this advice, we do, from the heart, assure you of our own sympathy, and of that of all the churches, with you in your afflictions, and of our earnest and daily prayers for you at the throne of grace; and that, should you be called to bear burdens, in

defending your rights, and the rights of the churches generally, the principles of common justice, and of Christian fellowship, assure us, that you will not be left to bear them alone.

Dear Brethren, we beseech you, that you think it not strange that fiery trials have befallen you; and that ye remember, with thanksgiving, that ye have not been called, as Christians of other days have been, to resist unto blood, and, in our happy land of liberty, never can be; and that ye bear in mind the self denial, and heroic faith, and patient endurance, of our Fathers, who came here to transmit to you the precious inheritance, for which they abandoned their country, and, in many instances, laid down their lives. And that ye faint not, and be not weary in well doing; but, in a temperate and steadfast conduct, prove that, both in doctrine, and in piety, and in church order, and in the love of Christian liberty, no man has taken your crown from you;—and that ye are the children, both of the Pilgrims, and of God.

And now, Brethren, we commend you to God, and to the word of his grace, which is able to keep you from falling, and to do for you exceeding abundantly beyond what we are able to ask or to think.

Voted, That this Council adjourn, sine die.

E. Porter, *Moderator*.

Warren Fay, *Scribe*.
William G. Lambert, *Assistant Scribe*.